Public Utilities

FORTNIGHTLY

January 17, 1946

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PUBLISHERS

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Public Utilities Fortnightly

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¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

THE still new year of 1946 brings the Rural Electrification Administration back to Washington, after a pleasant exile to the fair city of St. Louis since March, 1942. An interesting account of REA's second big moving day in its fairly young life is to be found in our "Government Utility Happenings" department (beginning page 99).

IT is a casual coincidence that the same city of St. Louis stands to gain as a substitute for REA another large field activity of a Federal government department—the Army record center. This makes it nice for REA personnel who were not prepared to leave St. Louis but who might otherwise have a difficult time finding suitable employment. It is also noteworthy that, during a war emergency, peacetime agencies, such as REA, have to clear out of Washington to make way for the military. When the war is over, apparently just the opposite trend takes place. The military agencies decentralize their activities, while regular peacetime administrative agencies, such as REA, come back to the nation's capital.

WE hope that REA personnel making the shift from St. Louis to Washington has more luck finding suitable living quarters in the still overcrowded capital city than the run-of-the-mill citizen whose duty brings him to Washington just occasionally.

THERE seems to be some popular notion abroad that, with the end of the war, there will be an end to population growth or at least a curb to its recent rapid rate of increase in the city of Washington. When one picks up Washington newspapers and reads of so many thousands of Army, Navy, and other war agency personnel moving out with their families, this impression is strengthened.

BUT if past history is any criterion, such an impression is illusory. Washington has always grown just as much, if not more, after the major wars of our national history as before or during them. Before the Mexican War one hundred years ago, Washington was less than 50,000. At the outbreak of the Civil War it was over 60,000, but during the following decade, which included both the Civil War and reconstruction period, it had increased 78 per cent, to a total of 110,000. Within the next twenty years before the outbreak of the Spanish-American War, it had increased more than 100 per cent, or a total of 230,000. This growth continued until, at the outbreak of World War I, Washington population stood at 350,000. By the end of World War I it was a little more than 400,000, but by 1932 it was a half million. Today the population of the city is roughly estimated at a *million*, with an additional quarter million in the suburban Maryland and Virginia counties.

THE reason for this continued growth in both war and peace must be found in the continued centralization and expansion of administrative activities of the Federal government. Washington is almost purely a governmental city. About half of its working population is either in the direct employ of the government or working with the government. The other half is generally engaged in servicing the needs of the first half. In time of war it is easy to see the need for such centralization of government controls. The brilliant accomplishments of our general staff activities for joint Army and Navy operations centered at Washington

ERNEST R. ABRAMS

Inflation could wreck the utilities, but will it happen?

(SEE PAGE 92)

speak for themselves in the winning of the war. Centralization and expansion of government activities in time of peace, however, must be justified from another angle.

DURING the depression and beginning with the New Deal government bureaucracy (using that term without opprobrium) flourished in Washington because it was based on a crisis endangering the economic foundation of our country. It was argued that a centralization of administrative controls to meet this economic danger was just as important as a concentration of military controls to meet a wartime danger to our national security.

BUT the cynical observer may be tempted to remark, just when was the last time we did not have some kind of a crisis in this country? When was there a time, if ever, that the servants and officials of our Federal government came to Congress and said everything was going along fine; they were getting along all right on what appropriations they had; that they didn't need any new help, more space, or more statutory powers? Not since the days of Coolidge economy have we had a condition even remotely approaching such a situation. Even then the tendency of the bureaucrats was to find some reasonable basis for expanding activities of their particular departments or increasing their importance.

IT is only a very natural tendency perhaps. In fact, we would call that commendable ambition or aggressive promotional management, if it occurred in private business. The responsible government official who is of the same flesh and blood as his prototype in private industry naturally thinks along the same line. If he didn't he probably wouldn't be worth his salt.

THE only trouble is that expansion of private business means an expansion of profitable tax-paying enterprise, making more jobs for more people to make a greater contribution of actual production to the nation's economic system. An expansion of governmental enterprise generally means an increase of tax-exempt, if not tax-eating, activities—making more jobs, it is true, but at the expense of all the rest of us taxpayers. In the case of a war emergency, the necessity for such expansion of activities of the armed forces is, of course, open to no question. But when a peacetime government moves from crisis to crisis, our cynical observer may well wonder whether our Federal government has become so big it is able to manufacture its own crises and batten thereon.

IT is not to be inferred from this discussion that we are putting up any sort of editorial argument against REA coming back to Washington. That was just the starting point for our broad remarks about the trend of government generally. As for REA, which left the capital city at great personal sacrifice for many of its employees during the war, we are glad to say we welcome it back. There seems to be some question in the minds of some people whether REA ought to remain under control of the Department of Agriculture. But there does not seem to be much question that whatever its departmental status, its permanent place should be in the nation's capital as an arm of the Federal government.

INCIDENTALLY, one of the feature articles in this magazine on the subject of REA activities generally was written by HARRY C. WOLFE, an active promoter of the Rural Coöperative Movement (beginning page 80). WOLFE, an electrical engineer (Wisconsin, '26) has seen service in both the co-op and private utility fields. He is now with the Budget Bureau in Washington, D. C. During the war he was an official of the utilities division of the War Production Board.

MAX C. MASON, whose article on the "Retirement Forecast Method of Gauging Depreciation" begins on page 69, is another new contributor to this publication. At present he is head of the survey department of the Potomac Electric Power Company which serves the nation's capital. MR. MASON was born in 1889 in Keene, New Hampshire, graduated from Massachusetts Institute of Technology with a degree in electrical engineering in 1912, and for the subsequent twenty years was employed by the Stone & Webster Engineering Corporation. In 1932 he joined his present organization.

ERNEST R. ABRAMS, whose article on the "Outlook for Electric Utilities under Inflation" begins on page 92, is a New York business and financial writer whose articles on various aspects of utility economics frequently appear in this magazine.

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

THE Securities and Exchange Commission granted a petition by a subsidiary of two holding companies for commission intervention to prohibit the holding companies from electing three representatives to the board of directors of the subsidiary company. (See page 69.)

THE next number of this magazine will be out January 31st.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 65–128, from 61 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

IRA MOSHER
Former president, National Association of Manufacturers.

"We are convinced that the cause of full employment would not be adequately served simply by the enactment of good intentions [in the Full Employment Bill]."

ABE FORTAS
Under Secretary, Department of the Interior.

"Civilization depends on each human being having his dignity and respect. No one must be entitled to injure his fellow and every man must be his brother's keeper."

WALTER E. SPAHR
Professor of economics, New York University.

"If our government officials really desire to preserve and to encourage private enterprise and private capitalism, they should give more attention to what makes them function best and what causes the maladjustments that result in unemployment."

SAM A. LEWISOHN
President, Miami Copper Company.

"Adoption of the right methods of conducting industry and tactful and effective supervision of employees will mean more for national stability than propaganda. There is as much opportunity for statesmanship in the industrial as there is in the political field."

ELIZABETH CHRISTMAN
Secretary, Women's Trade Union League.

"There is no sex differential when men and women spend the money they earn. Grocery stores do not have a double standard price tag. That 10 per cent tax on movie theater tickets is not reduced when a woman buys the ticket. There are no 'male' or 'female' tax rates."

O. MAX GARDNER
Chairman, Office of War Mobilization Advisory Board.

"Stability is not synonymous with security. We shall not achieve stability if we are permanently satisfied with our present standards. Society stagnates when it becomes smug and complacent. The key to stability is to set our sights ever higher, to strive for higher goals of production."

G. METZMAN
President, New York Central System.

"When a shipper uses railroad transportation he is paying his way, and even lightening his other tax burdens, because part of his shipping dollar meets railroad taxes. When a shipper uses 'free' government transportation facilities, he still pays his way plus hidden additions to his own tax bill. And while paying his way he also paves the way for socialization that may eventually destroy his own business."

WILLIAM GREEN
President, American Federation of Labor.

"We still have too many elected representatives in our lawmaking body who believe this is the best of all possible worlds and nothing should be done to change it. They profess to be concerned about the preservation of the free enterprise system but don't wish to lift a finger to save it."

HARLOW SHAPLEY
Director, Harvard Observatory.

"As citizens . . . we regard the proposed legislation, S 380 [Full Employment Bill], as essential to the well-being of the entire population. The Federal government must assume responsibility for full employment as it did for total victory, on the basis of orderly planning for the use of our natural resources and the energies and abilities of our people."

J. KEITH LOUDEN
Production manager, Armstrong Cork Company.

"We are now paying and will continue to pay higher wages than we did before the war; but the important point for us all to keep in mind is not how high are our wage rates but are our plants so organized and our people so trained that they earn these higher wages. The only real ceiling on wage rates is our ability to earn them."

JOHN M. HANCOCK
Partner, Lehman Brothers.

"I don't believe America will go knowingly to state socialism. It might conceivably slip into it unwittingly or go into it a step at a time, but the pressure to do so will not arise from the people generally on their own initiative. It will come from those who will make promises of its benefits for the sake of winning votes."

L. CLAYTON HILL
Works manager, Eagle Pencil Company.

"Increased productive and distributive efficiency which permits prices to remain the same or to be lowered while wages are being increased is the one and only way to a higher standard of living. If we are to achieve this unity of purpose, then we of management must work constantly to achieve greater confidence between management and the employee."

W. W. CUMBERLAND
Partner, Ladenburg, Thalmann & Co.

"Cheap money is the announced policy of our government and the impact of this policy affects our entire economy. It is the master-control device and as long as it is utilized we shall have a controlled rather than a free economy. Financial history is only too positive in teaching that cheap money can create a boom but is thereby more likely to cause than to prevent a depression."

EDITORIAL STATEMENT
The Guaranty Survey.

"The policy of deficit financing followed during the nineteen thirties and the series of huge deficits during the war appear to have created in many minds an almost casual attitude toward Treasury deficits. . . . If policies of that kind prevail, it is to be feared that the result will be a period of economic stagnation similar to that witnessed during the decade that preceded the war."

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Along with the many years experience in solving the problems of switchgear manufacturing, R&IE has concentrated much of its attention on Metal Cubicle Work. Switch and bus terminal cubicles have been made to accommodate every condition for many years.

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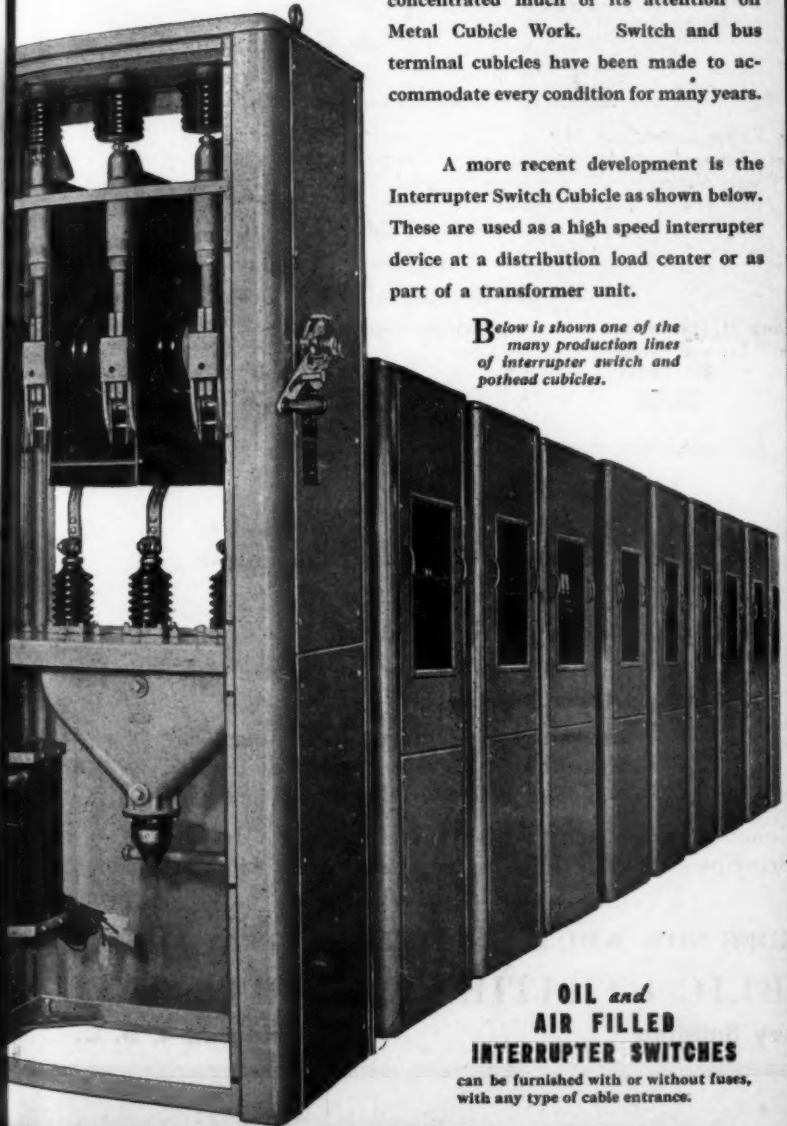
Below is shown one of the many production lines of interrupter switch and pothead cubicles.



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SWITCH OPERATI
MECHANISMS

SUBSTATIONS

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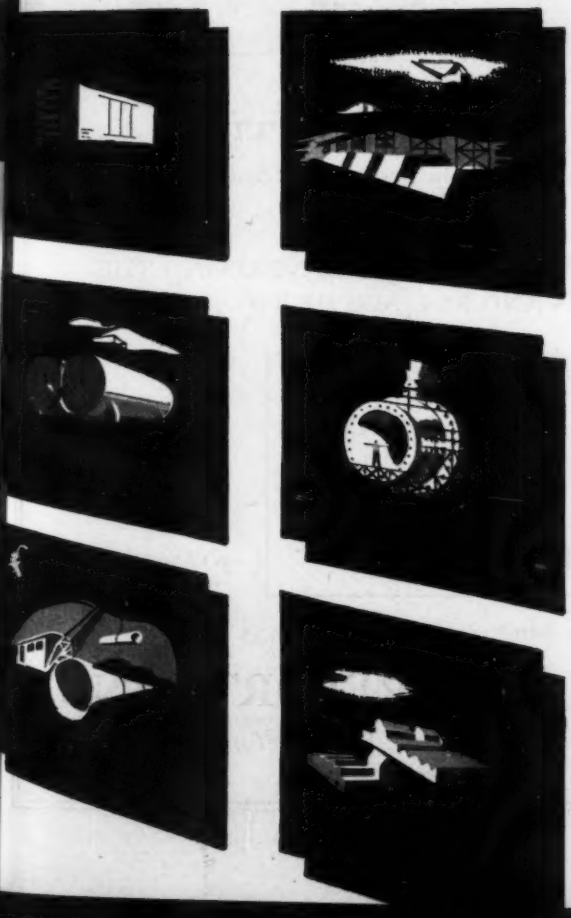
FOR AN INDUSTRIAL WEST



An expanding western industry has many uses for steel. Six are presented here to show the diversity of Consolidated Steel's precision fabrication.

If your construction plans call for the use of steel—Consolidated Steel is ready to offer you capable, immediate service. Address Consolidated Steel, Los Angeles 22, California; or Orange, Texas.

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ack in 1941 our engineers had completed the esign of a new street-lighting control which nfailingly insures adequate illumination re-ardless of changes and fluctuations in weather nd the twilight hour.

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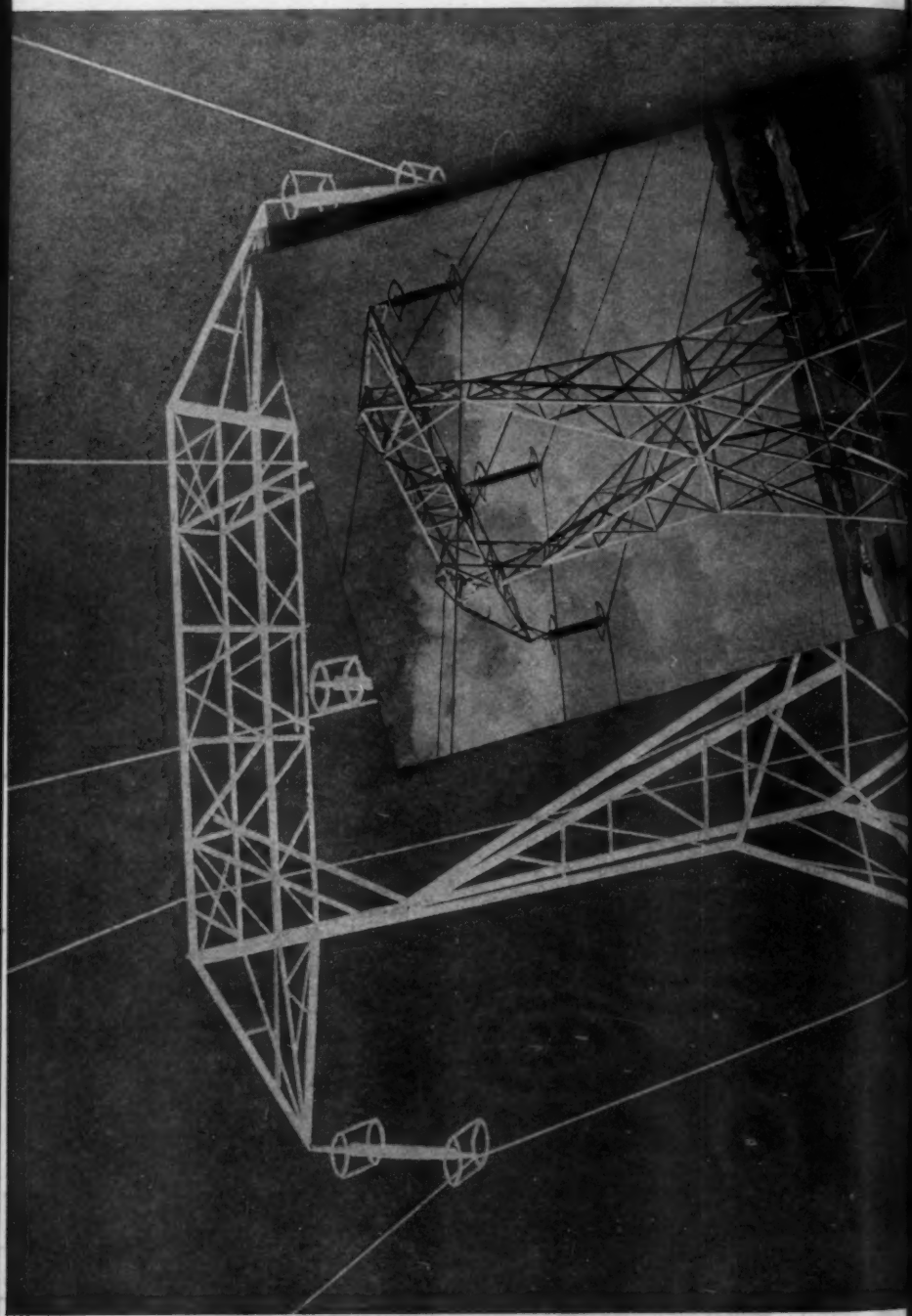

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Today, industrial electronics is opening new opportunities for load-building electrification. Management is looking to electronics as a key to greater productivity. Industrial people —from top management down—are hungry for information about its peacetime applications.

Now your power-sales staff can move into a position of up-to-the-minute leadership in this field. By means of this new, talking-slidefilm course, they can be trained to give practical assistance to customers—to understand the problems and talk the language of electronics, as applied to hundreds of industrial tasks.

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- 2. Electronic Tubes as Rectifiers
- 3. Grid Control of Electronic Tubes
- 4. Fundamentals of Electricity, Part I
- 5. Fundamentals of Electricity, Part II
- 6. Electronic Relay Systems
- 7. Electronic Rectifier Equipment
- 8. Thy-mo-trol (Thyratron Motor Control) Drive
- 9. Electronic Control of A-c Power
- 10. Electronic Frequency Changing
- 11. Photoelectric Systems
- 12. Electronics, Today and Tomorrow

This co-operative long-range plan to accelerate further electrification of industry and farming is now moving forward on three fronts:

1 Dozens of utilities are furthering their programs of power-sales training and field promotion with the visual aids now available on laundries, electronic heating, and industrial electronics.

2 Machinery manufacturers and power users are co-operating with G.E. in preparing additional motion pictures and handbooks to help your sales engineers promote electrification more effectively.

3 General Electric is exploring new fields for co-operative effort, making plans to publicize the ultimate benefits of further electrification—more *productive employment, and more people regularly employed.*

If you want more information on "More Power to America," call your local G-E representative.

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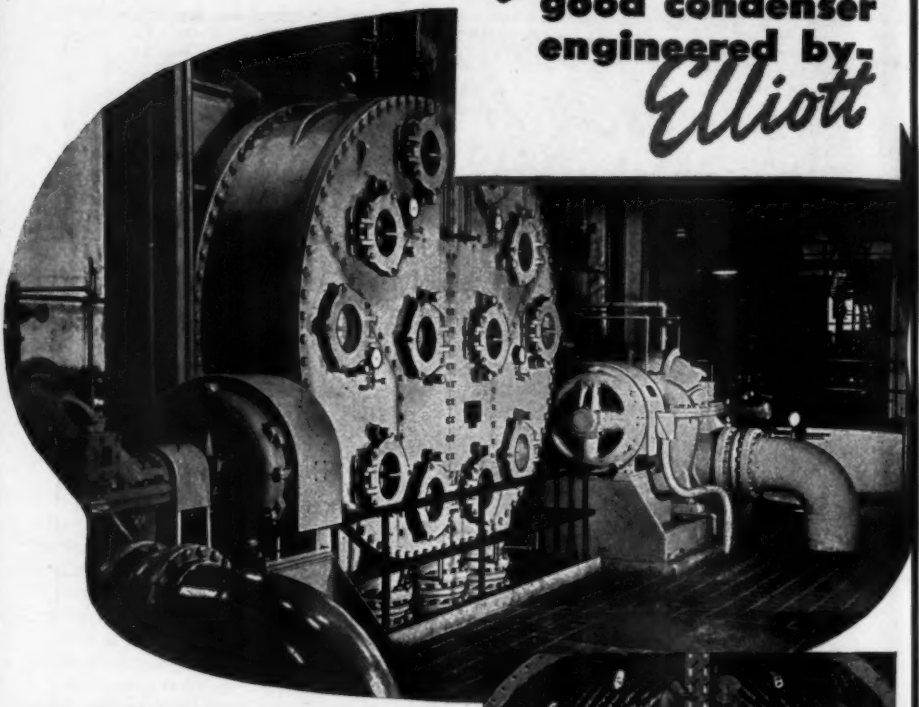
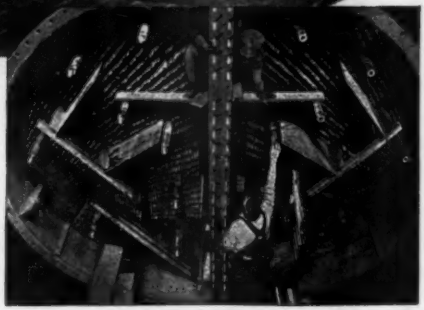
Another good condenser engineered by- Elliott





IN THE WESTOVER STATION of New York State Electric and Gas Corporation, this recently installed Elliott condenser serves a 35,000-kw turbine. The condenser contains 27,000 sq. ft. of surface, is arranged two-pass, with divided water-boxes, and is equipped with backflush water valves which enable the operator to change the direction of flow through tubes and water-boxes to remove trash. Beyond this, it is of typical Elliott design, featuring large areas, fan type tube arrangement, and no baffles to cause pressure drop by directional changes in steam flow.

This condenser is making a very good record, fully in line with the performance Elliott users expect and Elliott engineers demand, of Elliott condensers.

Tube arrangement tells the story of condenser performance. Elliott engineers have developed a system of tube spacing which insures the maximum number of tubes in direct contact with the incoming steam; regulation of steam velocity because tubes are arranged in converging straight lines, and maximum steam penetration. Partial tube supports, cut out in the steam lane section, result in complete longitudinal steam distribution with minimum pressure drop. Water collecting plates are provided to prevent blanketing of tubes in the lower half of the condenser.

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Utilities Almanack

JANUARY

17	T[A]	¶ *New England Gas Association, Operating Division, convention begins, Boston, Mass., 1946.*
18	F	¶ *American Society of Civil Engineers concludes meeting, New York, N. Y., 1946.*
19	S[a]	¶ *National Metal Exposition will be held, Cleveland, Ohio, Feb. 4–8, 1946.*
20	S	¶ *Pennsylvania Electric Association, Systems Operation Committee, will hold meeting, Pittsburgh, Pa., Feb. 6, 7, 1946.*
21	M	¶ *American Institute of Electrical Engineers convenes, New York, N. Y., 1946.*
22	T[u]	¶ *Pennsylvania Electric Association, Transmission and Distribution Committee, will hold meeting, Philadelphia, Pa., Feb. 7, 8, 1946.*
23	W	¶ *Institute of Radio Engineers starts technical meetings, New York, N. Y., 1946.*
24	T[h]	¶ *Pennsylvania Electric Association, Electrical Equipment Committee, will convene, Pittsburgh, Pa., Feb. 14, 15, 1946.*
25	F	¶ *Federal Power Commission resumes natural gas investigation hearings, Biloxi, Miss., Feb. 11, 1946.*
26	S[a]	¶ *Missouri Valley Electric Association will hold power sales conference, Kansas City, Mo., Feb. 13, 14, 1946.*
27	S	¶ *Federal Power Commission will resume natural gas investigation hearing, Chicago, Ill., Feb. 19, 1946.*
28	M	¶ *Independent Natural Gas Association starts membership meeting, Houston, Tex., 1946.* ¶ *Minnesota Telephone Association starts convention, St. Paul, Minn., 1946.*
29	T[u]	¶ *Federal Power Commission will resume natural gas investigation hearing, Charleston, W. Va., Mar. 19, 1946.*
30	W	¶ *Southern Gas Association will hold annual meeting, Galveston, Tex., Mar. 21, 22, 1946.*

Authenticated News

A Modern Miracle of Science and Engineering

Shown above is one of the spectacular actions involved in bringing natural gas from Texas East through a 1,265-mile pipe line to Charleston, West Virginia—a trench is being blasted in the bed of the Cumberland river, Tennessee, to accommodate part of the pipe line.

Public Utilities
FORTNIGHTLY

VOL. XXXVII, No. 2 JANUARY 17, 1946

Retirement Forecast Method Of Gauging Depreciation

Its simplicity and other practical advantages as compared with actuarial procedure should, declares the author, favor its acceptance by the regulatory body, and its flexibility should make it take full advantage of further information and experience as time goes on.

BY MAX C. MASON

THIS is a discussion of a practical forecast method for estimating depreciation requirements. It is an "accounting" method to the extent that it does not attempt estimates of existing depreciation of a particular property. And, yet, it is believed that adoption and reasonably careful maintenance of this system might well yield the following advantages:

1. A handy periodical check on the adequacy of the depreciation reserve as a whole and its annual accruals, showing up excesses or deficiencies in good season for corrective adjustment.

2. A method of coördinating engineering staff estimates of future retirements with book depreciation accounts in the interest of over-all system planning.

3. An adjustable cushion against unforeseen contingencies in the way of retirements ahead of schedule or ordinary expectation.

4. A control for harmonizing obsolescence and other nonphysical factors of depreciation with age-life or purely physical deterioration, through system planning schedules.

5. A saving of the time and expense

of maintaining depreciation accounts by individual units and subclassifications.

6. A flexibility such that its results need not be inconsistent with or repugnant to the requirements of any other accepted method of computing depreciation. On the contrary, the proposed method might function as an informal check or monitor on another system. Furthermore, its adoption for a test period would not commit management to continued use of the method.

7. As a by-product—a useful "preview" of system changes which could mean much to management in planning and in correcting difficulties before they get out of hand.

8. A convenient means of allocating the depreciation reserve and the annual depreciation accrual to plant—by functional groups and accounts—as required by many regulatory authorities.

THE trend toward exclusive use of arithmetical formulas in fixing depreciation requirements for electric utilities has not subsided yet. Perhaps some of us who have objected to the use of computations as a *substitute* for judgment have failed to realize that computations may be acceptable as an *aid* to judgment, and thus have overlooked one approach to a satisfactory solution of the problem. From a constructive viewpoint and with the benefit of increasing knowledge and experience, those who have to deal with the depreciation problem within the industry should find it possible to develop methods and procedure that are sound in principle and at the same time sufficiently detailed to meet the regulatory view as to the need of a mathematical treatment relating the depreciation requirement to the age and service life of the property.

It would be impossible to examine ways and means of analysis from the standpoint of soundness without first considering briefly the basic purpose of depreciation accruals and the depreciation reserve. To avoid the pitfalls of a general discussion of this subject we may begin with the simple question, "What are depreciation accruals used for?" The answer is that the depreciation accruals represented in the depreciation reserve are used to retire property from plant account when that property is withdrawn from service.

We may then ask, "When is property withdrawn from service?" While there are several possible answers to this question the one that is perhaps the most significant from an analytical standpoint is that in the ordinary course of utility operation property is withdrawn from service only when its duty or function is taken over by other property. If the utility is operating at normal capacity before and after the retirement, such "other property" must be either new property or property displaced functionally, and therefore made available, when new property is installed elsewhere on the system. It follows that plant retirements are associated, directly or indirectly, with plant additions.

AS a matter of fact plant retirements and plant additions are inseparable from a functional standpoint. Charge work orders and credit work orders are authorized at the same time and pass through the engineering, construction, and plant accounting divisions of the utility side by side. When a charge work order is completed the related credit work order is completed; if the charge work order is canceled,

the credit work order also must be canceled. The interdependence of the two programs has been brought to the attention of the industry during the period in which priority regulations have restricted new construction, and retirements also have fallen far below normal.

Plant additions are projected from year to year and are budgeted, written into jobs or work orders, and finally constructed, as a result of continuous study by the management of present and prospective consumer demand, civic developments, availability of improvements in equipment and methods, and many other engineering, financial, and economic considerations. Retirements from plant are an integral part of this careful planning and cannot be handled in any other way.

To attempt to account for depreciation on the basis of past experience alone is like trying to drive an automobile while gazing steadfastly into the rear view mirror; the backward view is of some value as it tells us where we have been, but the important thing is where we are going. What is needed in the treatment of depreciation is a procedure that will benefit from experience but will preserve the all-important principle of looking forward rather than backward; that, while recognizing age and expired service life as factors to be considered, will give primary weight to the normal function of management in planning property replacements. It is believed that the retirement forecast method of analysis here described meets these tests.

THE retirement forecast method is in effect a reduction to simple mathematics of long-established principles followed by management in the administration of the depreciation reserve. In considering the size of the reserve and the annual depreciation requirement the management must make allowance, first, for a moderate accrual of depreciation on the entire property; second, for a building up in the reserve of any additional amounts necessary to provide for retirements known to be pending; and, third, for maintaining a contingency element in the reserve to cover unknown or unforeseen losses. The proposed method is designed to analyze and evaluate these elements in the reserve.

The method may be called an "accounting" method since it does not purport to measure the actual physical or functional depreciation in the property. It is designed primarily to throw light on the adequacy of the current depreciation accrual and to furnish a convenient means of allocating both the accrual and the reserve to plant by

¶ "FROM *a constructive viewpoint and with the benefit of increasing knowledge and experience, those who have to deal with the depreciation problem within the industry should find it possible to develop methods and procedure that are sound in principle and at the same time sufficiently detailed to meet the regulatory view as to the need of a mathematical treatment relating the depreciation requirement to the age and service life of the property.*"

functional groups and accounts. When applied periodically as a check on the annual accrual it has shown remarkably consistent results. Since the procedure is still tentative in many respects, specific rates, periods, or allowances mentioned in the following paragraphs should be considered as illustrative rather than inherent to the method itself.

THE retirement forecast method assumes that for purposes of analysis the depreciation reserve may be considered as made up of three separate elements:

I. An amount accrued to date on account of all depreciable property, except property scheduled for retirement in the next ten years.

II. An amount accrued to date on account of property scheduled for retirement within the next ten years. This portion of the reserve is supported by a retirement estimate prepared by the utility's engineering staff responsible for system planning.

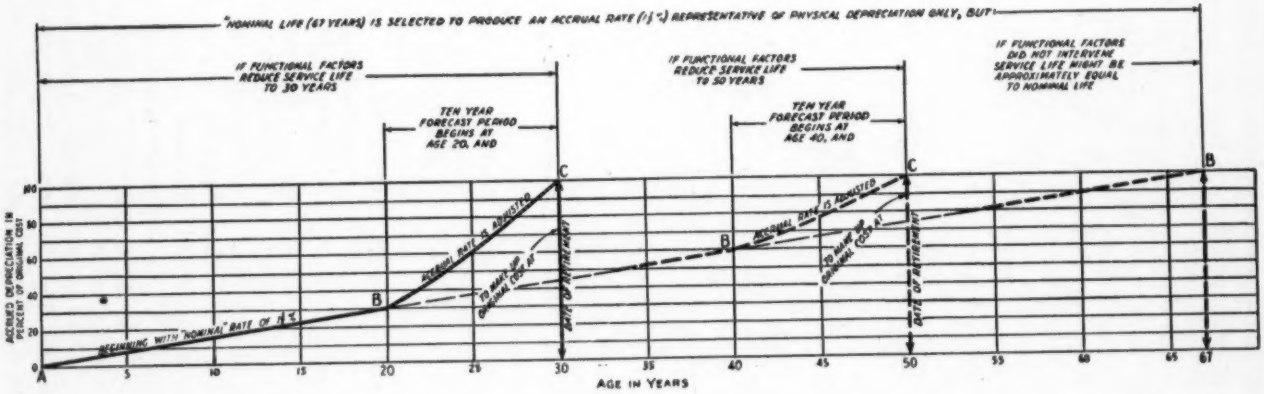
III. An amount considered as an allowance for unforeseen retirements. This portion of the reserve is intended to provide for retirements occurring unexpectedly or at an earlier date than anticipated, and to make up the deficit in all cases in which accretions in parts I and II of the reserve are insufficient to meet the actual retirements.

Most property is represented in part I of the reserve during the early years of its life, and in part II during the retirement forecast period, or ten years immediately preceding its retirement. With respect to a typical unit of property, the assumption is made that the depreciation accrual proceeds for a certain number of years at a low uniform rate, reflecting loss in physical condition only; that when obsolescence, inadequacy, governmental requirement, or some other factor pointing to the ultimate retirement of the unit becomes apparent, the date of withdrawal of the unit from service is forecast and the accrual rate is then adjusted, usually upward, to meet the estimated retirement date. It is assumed that the depreciation accrued against the unit is transferred from part I to part II of the reserve at the time this adjustment is made.

ACCRUALS to part I of the reserve, representing property not scheduled for retirement, are computed at rates based on so-called "nominal" lives, the qualifying term being necessary because these lives are chosen from the standpoint of physical depreciation only, functional depreciation being wholly disregarded. Some of the depreciation rates and "nominal" lives used in recent studies are: for overhead conductors, 2 per cent (50-year life); for meters, 2 per cent (50-year life); for substation equipment, 1½ per cent (67-year life); for structures 1 per cent (100-year life); for underground conduit, one-half per cent (200-year life). If these lives seem fantastic, one has only to examine the records of old steamships, pumping engines, buildings, bridges, water mains, and the like to realize that the present-day electric property with adequate maintenance could go right on serving the public for an astonishingly long period except for inadequacy, obsolescence, and other nonphysical factors which are linked with such uncertainties as community development and advancement in the art.

FIGURE 1

ILLUSTRATION OF RETIREMENT FORECAST METHOD AS APPLIED TO ONE ITEM OR YEAR GROUP OF PROPERTY



Notes: Accrual A-B is intended to provide for physical depreciation only. Accrual B-C provides for both physical and functional depreciation. The effect of diversity in the property as a whole is to smooth out irregularities due to change in accrual rates on individual items or year groups of property.

Figure 1, on page 73, shows how a single unit or group of property would be treated under the retirement forecast method of analysis. The unit represented in the diagram has a "nominal" life of sixty-seven years; its actual life is reduced by obsolescence or inadequacy, or both, to (a) thirty years or (b) fifty years, and the retirement forecast period begins at (a) age twenty or (b) age forty, respectively. In either case depreciation is accrued at the "nominal" rate of 1½ per cent per annum from the date of installation to the beginning of the forecast period. The rate of accrual is then adjusted upward so that that portion of the original cost not already provided for in the reserve will be made up by the beginning of the year in which the retirement is expected to take place.

A COMPUTATION for a typical item in a major equipment account, consisting of two turbo-generators scheduled for retirement in 1950, is shown in Table A. (See page 75.) The study was made early in 1944 and the computations are as at the end of 1943. In this example it is assumed that the retirement was foreseen in 1940, ten years in advance of the retirement date presently forecast, and that all depreciation accruals are now grouped in part II of the reserve. The total accumulation consists of an accrual of 1½ per cent per annum from 1917 and 1919, when the units were installed, to 1940, the beginning of the forecast period, plus three years' accrual at the higher rate necessary to meet the forecast date. In computing accruals for the earlier years, representing physical depreciation only, it would seem appropriate to use the straight-line method, but the remaining accruals, representing functional as well as physical depreciation, may be computed by any accepted method. Here a 4 per cent sinking-fund rate is assumed. A computation for a typical item in one of the mass accounts is shown in Table B. (See page 76.) In this case the item consists of the estimated total amount to be retired from the account in 1946.

In each of the above examples the computation deals with property scheduled for retirement in one particular year, and makes use of a forecast period relating to that year only. When applied to a composite property for which a 10-year retirement estimate is maintained, the depreciation study makes use of a separate computation, involving a different forecast period, for each year of the program in which property is scheduled to be retired.

PART III of the reserve must be sufficient (and here the judgment of management is the only measure available) to meet all contingent retirements not provided for in parts I and II. Such retirements may be caused by hurricane, flood, fire, earthquake, sabotage, and similar hazards, or by an unanticipated act of public authority. Retirements of this nature may include also displacements of property due to economic changes, progress in the art, or the advent of a revolutionary scientific development such as the successful transmutation of atomic energy, in cases in which foreknowledge of the retirement is not sufficient to permit full accrual through the regular channels in parts I and II of the reserve. If the contingency allowance in part III

TABLE A

COMPUTATION OF INDICATED DEPRECIATION ACCRUAL ON TWO TURBO-GENERATOR UNITS SCHEDULED FOR RETIREMENT IN 1950 BY RETIREMENT FORECAST METHOD STUDY AS OF DECEMBER 31, 1943

Year	Estimated Cost to Be Retired: Stated by Year of Installation	Estimated Cost to Be Retired: Stated Cumulatively	Indicated Depreciation Accrual: Annual	Indicated Depreciation Accrual: Cumulative
1917	$210,000	$210,000	.....	.....
1918	.....	210,000	$ 3,150	$ 3,150
1919	199,476	409,476	3,150	6,300
1920	77,524	487,000	6,142	12,442
1921 to 1940, inclusive		487,000	146,100*	158,542
1941 (first year of assumed forecast period)		487,000	31,039	189,581
1942		487,000	32,287	221,868
1943 (status at date of study)		487,000	33,568	255,436
1944		487,000	34,915	
1945		487,000	36,295	
1946		487,000	37,773	
1947		487,000	39,284	
1948		487,000	40,827	
1949 (status at estimated date of retirement)		487,000	42,470	487,000

Accruals 1918 to 1940, inclusive, computed on straight-line basis at "nominal" rate of 1¼%.
Accruals 1941 to 1949, inclusive, computed on 4% sinking-fund basis.
Indicated reserve requirement at December 31, 1943, $255,436.
Indicated annual accrual, year 1944, $34,915.
*$7,305 annually for twenty years.

of the reserve should be drawn down excessively at any time owing to one or more heavy retirements, it could be restored over a convenient period of years by a plan of accretion that could be consolidated with accretions to parts I and II. Part III acts also as a cushion in the reserve through which undue fluctuations in the over-all depreciation rate due to speeding up or slowing down of the retirement program may be avoided.

When the retirement forecast method is used for the purpose of testing an existing reserve, part III, or the contingency portion of the reserve, is represented by the difference between the existing reserve as a whole and the computed requirements for parts I and II alone.

Thus, the amount which is available in part III becomes a measure of the adequacy or inadequacy of the entire reserve.

THE completed study indicates the annual depreciation accruals necessary to maintain the reserve and satisfy the retirement program. The retirement program is revised annually and the study is carried through as a new computation at the end of each year. In this way the time-consuming procedure of maintaining depreciation accounts by small units and subclassifications of property is avoided.

It has been argued that the retirement forecast method is less sound than the straight-line, service-life method of depreciation analysis because it fails to consider all of the factors causing the ultimate retirement of property in determining the rate to be applied to the cost of property during its useful life. Proponents of the straight-line, service-life method rely upon a semblance of exactness in the method that is not borne out in fact. The factual evidence is overwhelming that service life cannot be determined in advance. Engineers concerned with the effect of physical, technological, and economic developments on the plant find that the projection of retirements for property in the lower age groups is subject to such error as to be unacceptable for system planning. Those who take the position that actuarial studies based on the utility's past experience are a criterion of future service life are assuming that history will repeat itself, which is exactly what history cannot do, since history is not concerned with present conditions, but with an earlier stage in the

TABLE B

COMPUTATION OF INDICATED DEPRECIATION ACCRUAL ON TOTAL AMOUNT SCHEDULED FOR RETIREMENT IN 1946 FROM POLES, TOWERS, AND FIXTURES ACCOUNT BY RETIREMENT FORECAST METHOD

STUDY AS OF DECEMBER 31, 1943

Year	*Estimated Cost to Be Retired* — *Stated by Year of Installation*	*Stated Cumulatively*	*Indicated Depreciation Accrual* — *Annual*	*Cumulative*
1929	$ 43,789	$ 43,789	.....	.....
1930	127,398	171,187	$ 1,314	$ 1,314
1931	130,457	301,644	5,136	6,450
1932	10,356	312,000	9,049	15,499
1933 to 1936, inclusive		312,000	37,440*	52,939
1937 (first year of assumed forecast period)		312,000	24,481	77,420
1938		312,000	25,466	102,886
1939		312,000	26,476	129,362
1940		312,000	27,538	156,900
1941		312,000	28,626	185,526
1942		312,000	29,792	215,318
1943 (status at date of study)		312,000	30,984	246,302
1944		312,000	32,201	
1945 (status at estimated date of retirement)		312,000	33,497	312,000

Year of installation assigned on a "first in, first out" basis.
Accruals 1930 to 1936, inclusive, computed by straight-line method at "nominal" rate of 3%.
Accruals 1937 to 1945, inclusive, computed by 4% sinking-fund method.
Indicated reserve requirement at December 31, 1943, $246,302.
Indicated annual accrual, year 1944, $32,201.
*$9,360 annually for four years.

development of the utility's property and business.

Computations, no matter how elaborate and detailed, can be no more valid than the premises upon which they are based.

STUDIES, in which retirements over considerable periods have been classified by causes, have indicated that in a rapidly growing property functional factors and requirements of public authorities account for 80 to 90 per cent of all retirements, and it is known that if the property were static this proportion of nonphysical causes would be greatly reduced. Obviously, predictions of property replacements due to nonphysical causes can be made only for comparatively short periods and then only by continuing studies of the present plant in relation to known and estimated future service needs. At the time new property is installed the only *known* cause of its ultimate retirement is physical deterioration. The retirement forecast method sets up an annual allowance for this known factor from the date of installation and defers allowances for the unknown factors until their nature and probable effect can be ascertained. As compared with any method depending upon long-term and unsupported predictions, therefore, the retirement forecast method narrows the time element and relies upon practical considerations such as the trend of economic and social development in the territory, growth in residential, commercial, and industrial demand, and the planning of system changes necessary to meet these developments.

It may be contended that the proposed method of analysis is merely going the long way around to arrive at a result that could be obtained more readily by direct approach. Or it may be felt that there are arbitrary factors inherent to the method that cast considerable doubt on the value of its conclusions. If the conclusions were to be based on a single study, as of one particular date, the writer would be inclined to agree with both criticisms, but that is not the intention. Repeated analyses of the same property develop trends that are far more informative than the results of any one study taken alone.

FOR example, the retirement forecast method was applied as a check on a depreciation reserve to which accruals were being made at a flat rate of 2½ per cent per annum on depreciable plant. Studies made at the beginning of three consecutive prewar years, based on identical assumptions as to "nominal" lives and other arbitrary factors, showed the results indicated below.

Beginning Of Year	*Total Depreciable Property*	*Part I Of Reserve (Accrual on Property Not Scheduled for Retirement)*	*Part II Of Reserve (Accrual on Property Scheduled for Retirement)*	*Part III Of Reserve (Balance for Retirements Due to Unforeseen Causes)*	*Total Existing Reserve*
1939	$73,575,000	$4,513,000	$7,847,000	$1,247,000	$13,607,000
1940	76,621,000	4,716,000	9,335,000	563,000	14,614,000
1941	85,455,000	5,012,000	9,782,000	230,000	15,024,000

Beginning Of Year	*Total Depreciable Property*	*Part I Of Reserve (Accrual on Property Not Scheduled for Retirement)*	*Part II Of Reserve (Accrual on Property Scheduled for Retirement)*	*Part III Of Reserve (Balance for Retirements Due to Unforeseen Causes)*	*Total Existing Reserve*
1942	$89,048,000	$5,386,000	$8,287,000	$1,338,000	$15,011,000
1943	94,220,000	6,213,000	8,896,000	1,558,000	16,667,000
1944	99,942,000	6,863,000	10,487,000	1,262,000	18,612,000

It was apparent that however dependent the absolute value of the contingency element in part III of the reserve might be upon assumptions made in the study, a substantial decrease in this element in two consecutive years was significant. The progressive decrease indicated that the rate of actual accrual during the period was somewhat below the level necessary to maintain the status quo of the reserve in relation to the prospective retirement program.

Further studies of the same property for the three years immediately following showed a different picture, as outlined above.

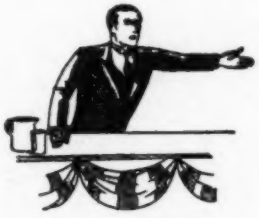
EXAMINATION of the 1942 and 1943 studies to ascertain the cause of the substantial increase in the contingency element in 1942 and the minor increase in 1943 disclosed the following explanation: The upward steps were due to revisions of the retirement estimate brought about by the war, which necessitated postponing until later years in the estimate substantial retirements originally scheduled to be made during 1942 to 1944, inclusive. If the nature of the revisions had been such as to bring forward the retirements from later years to earlier years of the estimate, the effect would have been exactly the reverse.

In the 1944 study the previous year's retirement estimate was used with practically no change except for the usual extension of the estimate to cover one additional year in the future, and the downward trend of the balance for unforeseen retirements, noted in 1940 and 1941, was resumed. This indicated that despite the increase in the unallocated portion of the reserve due to the freezing effect of the war on plant changes of every description, the rate of actual accrual to the reserve still was not sufficient to support the future retirement program without a gradual reduction in the unallocated reserve. Other figures developed from the study indicated that an increase of less than .5 per cent in the annual depreciation rate would be sufficient to reverse this trend and bring about a building up of the contingency element in line with the anticipated growth of the property itself.

As already stated, certain features of the proposed method, such as the nominal depreciation rates assigned to property not included in the retirement program, are subject to modification from the standpoint of personal judgment or the needs of a particular situation. Also, the period adopted for the retirement forecast may be modified upward or downward from the 10-year

basis used in the studies described. For those particular studies it was believed that ten years was about as far in the future as retirements could be estimated, or even allowed for, in a system planning program, but in other geographical areas or under more stable economic conditions a longer forecast period might be entirely practicable.

Where original cost records are maintained by accounts and by years, and a planned retirement program is available, a moderate expenditure of man-hours on the part of the property record staff would suffice to carry forward the depreciation studies as a regular annual project. If for any reason formal changes in established depreciation procedure were considered undesirable, no commitment to the method would be necessary. The studies could be used as an informal check on the adequacy of the annual accrual and also as an aid in estimating distributions of both the accrual and the reserve by functional groups and accounts. If and when the soundness of the method and its applicability to the property were demonstrated beyond question, its simplicity and other practical advantages as compared with actuarial procedure should favor its acceptance by the regulatory body, and its flexibility should enable it to take full advantage of further information and experience as time goes on.



Wage Rates Key

"POWERFUL pressures exist for advancing wage rates and there is much reason for believing that the increases granted will necessitate price advances in many important lines. These advances tend to become cumulative in character, spreading throughout the industrial system.

"In the interest of stabilization, businessmen should refrain from becoming panicky and should strive, as never before, to keep price advances, made necessary by increasing wage rates, at the lowest possible level. The low-price, expanding-market philosophy requires that the ratio between wages and prices be a constantly improving one. It is not always possible to lower prices in a positive sense, but it should always be possible to keep prices from advancing as rapidly as wages advance."

—HAROLD G. MOULTON,
President, Brookings Institution.

The Challenge of Coöperatives

They will continue to expand in the field of electric service, and in other fields, declares the author, because they set a higher standard of economic endeavor than the private companies which are concerned with profits first, while the coöperators apply the test: What is best for all concerned?

By HARRY C. WOLFE

WITHIN the circles of privately controlled industry one hears much discussion these days about coöperatives. They are referred to as "economic poison ivy,"[1] as a "sinister influence which may strangle American industry," or as a device used by the government to gain control of industry. In a recent article in PUBLIC UTILITIES FORTNIGHTLY, a writer places coöperatives "under a microscope"[2] to study the nature of this new blight on our intrenched, but slightly vulnerable, private industry. The results of this study, with the aid of a microscope, indicate that the writer might have presented a better and more accurate picture if he had faced the real issue, which is man-sized and which can be studied without a microscope.

What is a coöperative? As other writers in PUBLIC UTILITIES FORTNIGHTLY have so generously agreed, a coöperative is a union of persons, banded together on a fully democratic and voluntary basis, to supply its members with goods or services, or both. It may employ its members in producing goods or services for sale, or sell the goods which are produced by its members, or provide credit or banking service for its members, or combine all these aims in one. The earnings or surpluses resulting from the operations of a coöperative are distributed among its members in a manner agreed upon by the members as fair to each and every one.

Simple examples of coöperatives are consumers grocery stores where consumer-members come together to form their own retail outlet for groceries (the first coöperative, established in 1844 at Rochdale, England, was a grocery store), housing coöperatives in which groups of people join together to provide housing facilities for themselves, and group health associations

[1] PUBLIC UTILITIES FORTNIGHTLY, Vol. XXXIII, No. 7, page 419, March 30, 1944.
[2] PUBLIC UTILITIES FORTNIGHTLY, Vol. XXXV, No. 6, page 350, March 15, 1945.

in which members share the responsibilities of medical care through paying equal monthly payments for complete health protection. Farmers commonly form coöperatives to purchase seed, fertilizers, and other farm supplies, and they also form selling or producing coöperatives to sell wool or to produce butter. Occasionally labor groups will join together to form a producers coöperative which manufactures and markets the products of their labor. In recent years there has come into prominence a type of coöperative that is better known to the utility industry —rural electric coöperative.

SURELY no one, and least of all those engaged in a public service industry, will take issue with the principles of a coöperative. They study their own problems and make their own decisions—a much better and more democratic practice than having decisions made in Washington, or New York. When a group of farmers decides to build some new barns for themselves and in doing so to pool their purchasing power and do the work themselves, we say this is a fine community spirit and we commend them for it. When iron ore companies form a coöperative to furnish transportation service for themselves, or if banks form a coöperative to furnish clearing house services, we say it is good business. When doctors form a "producers" coöperative to furnish health service through a hospital it is all right; but if patients form a coöperative to construct a hospital and engage the services of doctors, we are not so sure. When farmers join together to furnish electric service to themselves, they are frowned upon as hampering private enterprise.

Fundamentally, coöperatives are free enterprise at its best. Coöperatives are that form of free enterprise which has wide ownership and democratic control and whose motive is to provide better and more efficient service to meet the needs of the people rather than to obtain a profit for a relative few. Membership is open to all, and each member has only one vote regardless of the number of shares that he may own. The return to the member is in proportion to his volume of transactions with the coöperative.

FEW coöperatives have come into being except where there has been a pressing economic need. People gradually come to the realization that the system which serves them is not doing nearly as good a job as it might and they recognize that they can render better service for themselves. It is important to note that people find in coöperatives a method of meeting their needs within the framework of the established economy—free enterprise.

Coöperatives have been set up to meet human needs and they have operated as a part of free enterprise wherever they have been established. The history of coöperatives in the United States parallels that of coöperatives in other countries. Coöperatives the world over subscribe to the same general principles and differ only in some minor respects. Some coöperatives have been established through the resources of their members, while some have had aid in one form or another from their governments.

Coöperatives have been established in the United States only because some of the people of this country have not

received the goods and services under the existing system that they could reasonably expect to be made available to meet their needs. Coöperatives are actually an expression of the people against certain inefficiency or at least partial shortcomings of a private profit economy and against what they believe to be the waste of idle men and idle resources. Even though private industry may have good reasons for not doing a better job, the simple fact remains that people would have found it unnecessary to form coöperatives if goods and services had been provided at fair prices and if opportunities for full employment had existed. That is why we have rural electric coöperatives.

What are the facts? The principal facts for electric coöperatives are quite apparent. Perhaps these will give us an answer that can be applied to the whole problem.

The important facts are:

I. The farmer had a tremendous need for electric service (or fertilizer, or health service, or building materials).

II. To approach a standard of living equal to that of the country as a whole the farmer had to have electric service.

III. The farmer made many efforts to get electric service.

IV. Utilities, for reasons which are logical in a private profit economy, were in the past, at least, able to serve only a very small percentage of the farmers, and then at high rates.

V. By 1932 there was not only a greatly increasing demand for rural electric service but it was becoming apparent to the farmers and to our nation that there were great surpluses of man power and materials which could be put to useful service, one of which was rural electrification.

VI. Farmers were unable to finance extensive rural electric systems with their own resources and utilities were unwilling to take the risk of themselves making capital expenditures for a large-scale rural program.

VII. The Federal government determined that the idle man power and materials must be made available to construct the needed lines and to provide the materials and equipment necessary to utilize the electric service even though the government was obliged to assume a risk in doing so.

The facts of lesser importance are:

1. Most utilities were not interested in accepting the government loans under the provisions laid down, nor the obligation of serving the farmers.

2. Coöperative groups persuaded the government that coöperatives could take the responsibility of the loans.

3. The government, finding a promising field, began to encourage and stimulate coöperatives.

4. Most utilities built lines which were intended to protect the utilities' area but which also blocked some coöperative lines. Some coöperatives did the same thing.

"FEW *coöperatives have come into being except where there has been a pressing economic need. People gradually come to the realization that the system which serves them is not doing nearly as good a job as it might and they recognize that they can render better service for themselves. It is important to note that people find in coöperatives a method of meeting their needs within the framework of the established economy—free enterprise.*"

5. Some utilities refused to sell wholesale energy to coöperatives and some coöperatives refused to buy. Most coöperatives, however, use power generated by private utilities.

6. A few utilities and coöperatives worked out equitable arrangements for adequately serving the farmers in their joint areas.

7. Coöperatives had the advantage of low interest rates on government loans but they had the disadvantages of establishing new systems in the more sparsely settled areas and starting with inexperienced personnel.

8. Utilities suffered the embarrassment and discomfort of government-financed competition in what had been their exclusive fields, but there was no financial loss or actual loss of business or profit.

9. The activity of the coöperatives actually stimulated utilities to engage in the construction of the better paying farm lines and provided them with more revenue through the sale of wholesale energy to the coöperatives.

10. Theoretically, coöperatives have some advantage in taxes in that there are state and Federal laws which give some exemptions to coöperatives in corporation and income taxes.

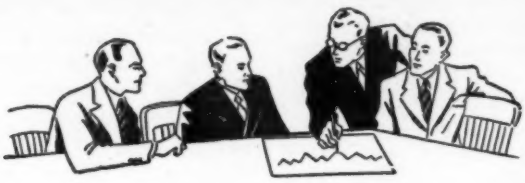
11. Utilities have opposed coöperatives in many ways. The most recent method has been to emphasize that private utilities are "tax-paying business concerns" while stating or implying that coöperatives are tax exempt.

12. Coöperatives do pay taxes—they pay property taxes, sales taxes, use taxes, Social Security taxes, unemployment taxes, workmen's compensation taxes, real estate taxes, and taxes in the form of license fees. In general, coöperatives do not pay income taxes because earnings are refunded to the members—and because some have exemption under law.

Now let us try to understand something of the circumstances outlined in the above statement of facts. What is the motivation that has stimulated the initial action which brought about these circumstances? In private industry the motivation is private profit. It is a desire to make an initial profit, to add to existing profits, to protect the economic order which makes these profits possible, or to prevent some or all of these profits from being taken away by other private profit groups or by the government. In a society that has moved so slowly from the stone age this motivation is not too difficult to understand and it must be recognized in any steps that are taken.

Even coöperatives and members of coöperatives are motivated by a desire to add to their real income — more goods and services per member. But coöperators have added a secondary motivation. It is a concern for others as well as for themselves. They each want more goods and services for themselves but they want them for their neighbors also, and they are willing to join together in a democratic way to gain this end. Private industry, except in rare instances, has adhered strictly to the motivation of private profit while ignoring moral and social responsibilities.

In more concrete terms, private industry is concerned with profits first. If efforts for maximum profits lead to idle resources, idle materials, and idle men, the test remains the same: What action should be taken to obtain the maximum profit? Coöperators, on the other hand, apply the test: What is best for all concerned? Coöperatives are formed to meet individual needs and the needs of coöperative groups through pooling of resources and efforts to meet common needs with available men and available materials.



Reasons for Establishment of Coöperatives

"COÖPERATIVES have been established in the United States only because some of the people of this country have not received the goods and services under the existing system that they could reasonably expect to be made available to meet their needs. Coöperatives are actually an expression of the people against certain inefficiency or at least partial shortcomings of a private profit economy and against what they believe to be the waste of idle men and idle resources."

HERE then is the real basis for conflict. Private industry sees in coöperatives a potential competitor who may in one manner or another reduce profits. Coöperatives are not like the conventional newcomer in the accepted field of private enterprise. They cannot be absorbed into the recognized fold of private profit industry. They bring into the field of free enterprise a new standard—"What action will serve the best interest of all concerned?"

Coöperatives are different in another way. Because they are attempting to establish a new standard which is in the interest of large groups of people rather than a few, they receive some limited support from the people or the government. Even though private industry has been accustomed to obtaining favors from the government in the form of low interest loans, subsidies, tariff advantages, patent protection, tax concessions, and regulated monopoly, an objection is raised when coöperatives obtain from the government some aid through low-cost loans and minor tax concessions.

What is the issue as private industry sees it? It is one of protecting its profit system from competition—competition that might either reduce its profits or substitute a different form of enterprise. Private industry acts under the assumption that any form of competition different from that set up under the standard of private industry is "unfair competition."

WHAT is the basic issue as coöperatives see it? It is a question of whether private profit enterprise shall continue to be the exclusive form of free enterprise or whether other forms of free enterprise with different standards of profit and service shall be encouraged and permitted to develop. Rather than blindly supporting private profit enterprise and expecting the gov-

ernment to protect it from all forms of competition, coöperators believe that private profit industry should examine its standards to see if perhaps those standards should be modified in the light of human progress. Private industry should not complain about competition from coöperatives unless it acquires some understanding of why coöperatives exist and why it has been necessary to give them some small advantages in getting started.

What is the conflict between the private electric utilities and the electric coöperatives? Basically it is the same as the common conflict between private profit industry and other forms of coöperatives. Private utilities see in coöperatives the possibility of a new type of utility ownership which may gradually encroach on their existing systems and take away the source of existing profits. Until recently, utilities have not been generally concerned with the possibility of losing potential rural line profits. On the other hand, the people, as represented by the government which enacted the rural electrification legislation, and the farmers who formed the coöperatives, were resolved to use available man power and materials to extend electric service to farm homes regardless of the implications of the future of the private utility industry. It is important to note that this step was taken at a time when large volumes of man power and materials were idle in a private profit economy and that the basic motivation was not to compete with an existing industry but was to use these materials and man power to meet new urgent needs.

WILL the private utilities say today that the government and the farmers should have stood by in 1934 waiting for private industry to extend electric service? If the developments resulting from government action to extend this service have not been in the best interest of all concerned, what would the private utilities propose? It is not enough to say that private industry should have been left alone then—or now. If private profit is to be the sole standard for action in the future, industry must demonstrate that it can—and will—render the maximum service to the people with all available man power used to best advantage.

But in 1930 private utilities chose to pass up an excellent opportunity to extend rural lines in favor of taking a safe position. Utilities contended that the rural lines would not pay out even though it was apparent to the farmer that there were readily available man power, materials, and equipment to do the job. This attitude established the necessity for coöperatives. As with other coöperatives, the rural electric coöperatives were formed to meet a need—not to compete with private industry or to take advantage of government subsidy. If utilities had made the service available on a reasonable basis, if they had manifested the same interest in rural service they now do, there would have been no occasion to form coöperatives.

What is the government interest in coöperatives? The government is obliged to concern itself with coöperatives because it is a responsibility of a democratic government to see that free enterprise—enterprise that is equally free to all — exists among its people. When industry under private ownership and control fails, or is not able, to meet adequately the needs of the peo-

ple, it is perfectly proper for the government to take steps to encourage other forms of free enterprise, at least by way of supplemental service.

If the government finds it necessary or desirable in providing for the welfare of the people to give some preferential treatment to a group that appears most likely to meet the needs of the people, there should be no complaint from those who have had an ample opportunity to meet those same needs and have failed or neglected to do so.

On the contrary there should be rejoicing that a solution has been found for a common responsibility. The government cannot permit great need to exist among the people while there are available men and materials to meet such need. The least that the government could do to meet the need for rural electric service was to encourage some form of enterprise which showed possibilities of meeting the need.

In opposing coöperatives some private utilities claim that the government should treat private utilities and coöperatives equally, but they want equal treatment according to their own old rules.

Would it not be wiser to consider the equal treatment that is available under the new rules? The two advantages that coöperatives have are open to private utilities also. Private utilities can obtain the low-cost loans from the government. Private utilities can be free of income taxes by becoming coöperatives, as defined at the beginning of this article, and returning all earnings to the consumers. This last step is actually much more realistic than expecting that the people will continue to favor a form of enterprise that places profits above human needs.

The use of government funds to finance electric coöperatives is only incidental. The coöperatives are formed to get electric service to farms. Private banks or individuals may have provided the capital as they have for other coöperatives. But the risk was almost as great as the need. Only the resources of the government, combined with a bold determination to serve the people, were great enough to make such a risk possible. If there is anything wrong when a government elected by the people determines, by legislation, to lend the people's money to coöperatives that serve the people—an "of, by, and for" procedure—let the critic first consider whether or not the previous financial system was serving the com-

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¶ *". . . private industry is concerned with profits first. If efforts for maximum profits lead to idle resources, idle materials, and idle men, the test remains the same: What action should be taken to obtain the maximum profit? Coöperators, on the other hand, apply the test: What is best for all concerned? Coöperatives are formed to meet individual needs and the needs of coöperative groups through pooling of resources and efforts to meet common needs with available men and available materials."*

mon good. Government loans to coöperatives are the people's way of solving the problem of financing an effort that is in the best interest of the nation as a whole. The return on such an investment is not measured in dollars alone. The return is partly in human values.

What do private utilities propose as alternatives to electric coöperatives and government loans to coöperatives? Do they propose to become, what most call themselves, public service companies? How do they propose to get electric and telephone service to all farm homes? One would gather from some utilities' comments that if coöperatives were only stopped, farmers (and many others who are without service) would automatically get all needed services. Is this the case? With fading competition from mutual systems, what have the telephone companies done to extend rural service? (There are fewer rural telephones today than there were in 1920.) If utilities had been successful in combating electric coöperatives, would there be as many farms with electric service as there are? Do utilities *now* propose to serve *all farms* in their areas?

THE answers are obviously "No." But today utilities are taking steps that are equally farfetched. They say that we should put additional taxes on coöperatives. Will this get more service to farmers? They say that they should serve the farmers that "can afford" electricity and that the government may serve the balance. Will this get service to more farmers? But in most instances utilities make the plea, "Leave this to our own system of private (not free) enterprise and things will be all right." Will leaving private enterprise to its own choosing result in the greatest service for the common good?

Before we come to a conclusion on the issues outlined above, let us review briefly the past relationship of coöperatives to utilities: Prior to 1930 there were very few coöperatives that were rendering electric service. By 1932 the expansion program of electric power systems as a whole had dropped from around $800,000,000 per year in the late twenties to less than $200,000,000. Construction costs were high and in practically all instances extensions of service to farmers were dependent on cost of construction. Electric equipment of the types that would be most useful to farmers had developed rapidly during the twenties—refrigerators, ranges, water pumps, feed grinders, brooders, milking machines, radios. But utilities were convinced that farmers could not afford these things and most farmers were too.[3]

SO utilities handled requests for farm extensions by sending out engineers to estimate costs and "salesmen" to explain that the farmer couldn't afford the extension. At the same time the utilities were laying off construction crews, copper was selling for 8 cents a pound, electrical equipment manufacturing plants had much idle capacity, people generally were pessimistic, and none in the utility industry dared stick his neck out by saying, "We have the men and materials and resources. Let's build lines to serve 5,000,000 (or even 500,000) farms."

[3] In my home state of West Virginia the state farm bureau slogan still reads, "Electricity for Every Farmer That Can Afford It."

Advantage of Coöperatives over Private Profit Industry

"THE only real advantage that coöperatives have over private profit industry lies in the motivation of coöperatives. If private industry would place its desire to serve the public welfare on a par with its desire for profits, coöperatives would have no advantage whatever. The limited advantages that coöperatives have in the form of low-cost loans and minor tax exemptions are a by-product of their public service. The only way that private industry can earn equality with coöperatives is to adopt the standards of coöperative principles."

(Consider what a good job utility engineers could have done at this time if they had been given the task of extending and improving distribution systems with faith in American progress.) But when the farmers began to learn that electric service could be made available to farms on a reasonable basis and that they were joined by farseeing public servants — like George Norris—they had the courage to take steps to put idle men and materials to work providing that service.

With this background the government still attempted to extend electric service to farmers through the accepted system of private enterprise.[4] Low-cost loans were to be made available to utilities to stimulate them in extending farm lines. Care was taken to retain the distribution of electrical equipment in the hands of private enterprise so that even today REA coöperatives are handicapped in supplying their members with equipment on a coöperative basis. And the effect of initially staffing the REA with men who were schooled in dealing with private enterprise rather than with coöperatives remains, so that today only a few within the REA understand and subscribe to coöperative principles. But the utilities, apprehensive of government control, declined the low-cost loans.

[4] When the rural electrification bill was under consideration by Congress, George Norris was convinced that all of the money made available for loans would go to the private utilities and that coöperatives would not have a chance even though loans to coöperatives were to be authorized. Long opposed to private utilities because they had not served the public as well as he thought they should, Norris said: "Even so, I am willing that this bill (as agreed on in conference and providing for loans to private utilities) should pass. The farmers' need for electric service is great and I see no other way for them to get it."

But farm groups who knew the strength of coöperatives pushed hard for loans from the REA, and the REA, softened a bit by the coldness of the utilities to its proposals, agreed to lend some money to coöperatives. They did so only after coöperatives came in with detailed plans and signed guaranties from prospective consumers that the lines would pay out. Slowly the REA became aware of the possibilities in coöperatives. The result today is that coöperatives, with all the handicaps of working in a government program, starting with inexperienced personnel, competition (fair and unfair) from the private utilities, and serving only the areas that utilities could not find profitable, are serving over a million farm homes. The coöperatives not only get the electricity there but they make ends meet in a businesslike manner.

During the same time private utilities have added another million farm consumers to their own lines. Electricity on these 2,000,000 farm homes has meant an increase in living standards and productivity. It has meant utilization of our resources and production capacity to serve the people. Materials and man power have been used to construct the distribution lines and to manufacture the many appliances used on the farm. Farmers are sharing their production with the many thousand men and women who operate these lines and this sharing is to the advantage of both. The purpose of coöperatives, and of the government in giving some aid to coöperatives, has been to achieve this end—and more yet, until all farms have electric service. Can private utilities say as much?

By now it must be apparent even to utilities themselves that they could easily—starting in 1930—have constructed lines to serve those 2,000,000 farms without any guaranty of revenue other than their own understanding of the farmers' probable use of electricity at fair and reasonable rates. If utilities had tackled this job with foresight and with the means that were available to them they would now be in a position to serve the balance of the farms to the mutual advantage of themselves and the nation. Instead, private utilities held back until the farmer made the decisions for them. Now they complain that coöperatives have an unfair advantage. Is this a reasonable complaint?

The only real advantage that coöperatives have over private profit industry lies in the motivation of coöperatives. If private industry would place its desire to serve the public welfare on a par with its desire for profits, coöperatives would have no advantage whatever. The limited advantages that coöperatives have in the form of low-cost loans and minor tax exemptions are a by-product of their public service. The only way that private industry can earn equality with coöperatives is to adopt the standards of coöperative principles.

In looking to the future and planning for full employment, it is essential that ways and means be developed to utilize fully our man power and material resources. The electric and telephone utilities had a chance to take up their share of the slack in the early thirties, but they pleaded inability to do so because of financial limitations, whereas actually the limitation was established by placing private profit

above public service. If outmoded financial arrangements stand in the way of a prosperous economy, prevent men from getting work, and prevent consumers from getting needed goods and services, the conventional financial procedure must be set aside for a more realistic approach. The coöperatives did this.

WHAT do utilities see ahead? Do they see a continuing conflict with coöperatives and government or do they see a much greater opportunity to serve the people than they have ever dreamed of in the past? Are they thinking of 3 cents a kilowatt hour with only the well to do using the electric range, or do they see 1 cent a kilowatt hour with ranges and water heaters in most every home and heat pumps in a good share of them? Will utilities use their skill, resources, and leadership ability to deliver maximum service to the people, or will they cling to the restrictive test of "Will it pay a profit?" and then complain when the government or coöperatives step in to do the simple and easy job of using available materials, productive capacity, and man power to serve the best interest of our people.

Service to all at minimum rates is the only reasonable answer. Coöperatives will do the job if the utilities cannot.

The struggle between utilities and coöperatives is somewhat like the race between the hare and the tortoise. It is not the bragging of past accomplishment, nor the self-confidence, nor the complaining of the heat of the race, nor the taking it easy along the way that wins. Technical improvements and increased use, which come largely from experience and which are automatic, are no indications of progress. Progress is measured by performance —the service delivered in relation to ability to deliver. Real progress comes from keeping everlastingly on the job and rendering the best possible service within the limits of ability to perform.

THE answers come easier when we work under coöperative principles. The dollar test is restrictive but the human value test is without bounds. Sometime ago an editorial in *The Washington Post* raised the question of full employment. It asked how full employment is to be brought about in ways consistent with the preservation of free enterprise, and stated; "We confess we do not know the answer; to be frank, we think the stated goal is unattainable without a continuous outpouring of government funds. . . . The

¶ "COÖPERATIVES *do not think in terms of competition—of absorbing private industry or taking a share of its profits. Coöperatives do not believe in government control of industry—or coöperatives. The one objective of coöperatives is to do a better job of producing and distributing goods and services on a democratic basis. Wherever private industry fails to do the best job possible it may expect coöperatives to assume some responsibility for that job.*"

alternative would be to *lower our sights.*" Coöperatives are pointing the way for *free enterprise* without lowering their sights. Coöperatives have found the answer to be simple. If there are available men, or available materials, or available productive capacity, they are put to work meeting the people's needs. If, as a nation, we have sufficient man power and materials for every farm home to have electric and telephone service, and if the more urgent needs have been met, the only remaining question is the selection of the proper mechanics of doing the job. Idle men and materials have proven that we can afford it. If there is government participation in the form of loans we do not have an "outpouring of government funds." We simply have positive government action to prevent wastage that occurs when men and materials are idle. Is this bad?

WHAT do coöperatives see ahead? They see a society in which human values are more important than dollars or machines, in which service is placed above profit. They see increased production with full employment and a fair share of goods and services to all. The mechanisms may prove a little difficult—just as it is difficult to establish and operate a rural electric line—but the standards of coöperatives assure success in ultimately achieving the stated goals. Coöperatives see economic democracy where all men have economic freedom but are responsible to each other for the welfare of all.

Coöperatives do not think in terms of competition—of absorbing private industry or taking a share of its profits. Coöperatives do not believe in government control of industry—or coöperatives. The one objective of coöperatives is to do a better job of producing and distributing goods and services on a democratic basis. Wherever private industry fails to do the best job possible it may expect coöperatives to assume some responsibility for that job.

Coöperatives will continue to expand in the field of electric service, and in other fields, simply because they set a higher standard of economic endeavor. Those who are spending their efforts to protect what they consider a vested right cannot recognize the opportunities for rendering better service. Where they fail, coöperatives will provide the answer.

Superiority of Private Enterprise

"IN Britain the government owns both telephone and telegraph systems, and no one who has had experience with them doubts that the American system of private enterprise is superior. An analogous situation exists with regard to socialized medicine.

"Despite these warnings there are innumerable fatalists who say we must go into state control of all these things, whether we like it or not.

"That is approximately what the moth said just before he committed suicide by diving into a flame."

—EDITORIAL STATEMENT,
The Daily Oklahoman.

Outlook of Electric Utilities Under Inflation

Unless the purchasing power of the dollar starts taking fancy nose dives, it does not appear, declares the author, that even the common stockholders of these industries have much to fear from any degree of lessened money values we are likely to experience in the United States.

By ERNEST R. ABRAMS

When most of us talk about inflation, we mean the wild and ruinous variety experienced in Germany after World War I. We are thinking about how in December, 1923, or five years after the war had ended, wages were 108 trillion, wholesale prices 119 trillion, and the cost of living 125 trillion times as much in German marks as they were only ten years earlier.

We think, today, of inflation as something yet to be experienced in this country, without realizing we have had it for years. According to monthly releases of the Bureau of Labor Statistics, the cost of living in the United States last September was 85 per cent higher than in 1913 and 30 per cent above the 1940 level, while the Office of Economic Stabilization recently placed the cost of living at the end of November at one-third above that of January 1, 1941.

We may, moreover, have substantially more inflation in this country before World War II is paid for. With wages and prices chasing each other, while the volume of production remains constant or declines, we are fast establishing an ideal culture in which inflation may breed. As a result we may see the prices of nonregulated goods at several times their present level; but there is little possibility that we will have the ruinous type of inflation rampant in Germany a quarter of a century ago. We did not lose the war and we do not face the prospect of paying huge indemnities to our former enemies. So we have no need of wrecking our financial structure and reduc-

ing people to poverty in an attempt to evade payment of unpopular debts.

But even with the mild inflation we can expect over the next decade, the profits of such price-regulated industries as electric utilities may be adversely affected. Although their retail rates are publicly regulated, and renewed attempts to socialize the industry are being made through establishment of far-flung public power projects, these service institutions have little control over their costs.

WHAT, then, will be the effect of further inflation on the earnings of privately owned electric utilities? How serious must it become to erase all possibility of common or preferred stock dividends, to threaten or prevent the payment of interest? Will there be any offsetting reliefs to temper its shock to these enterprises?

As a prelude to this discussion, it might be well to glance at the table on page 94. Since this article is being prepared during the first week of December, 1945, the income account of the industry for the full calendar year is not available but that of the 1944 year will serve our purpose just as well. Since, however, the new Revenue Act with its elimination of the Federal excess profits tax is now on the books, both actual and adjusted income accounts are presented. And it should be remembered that elimination of the excess profits tax does not cause a corresponding decrease in the industry's total Federal tax bill. Since taxable income will still be subject to the normal income tax, the saving to the industry will be only some 53 per cent of the excess profits tax previously paid, or about $111,000,000.

Pure operating expenses took the biggest bite out of total revenues last year, accounting for nearly 40 cents of every dollar received and comprising about 57.3 per cent of total operating deductions on an adjusted basis. These expenses, under prescribed systems of accounting, fall into the five following general classifications:

	Millions
Production Expense	$ 641
Transmission and Distribution	265
Commercial Accounting	92
Sales Promotion	35
Administrative and General	192
Total Operating Expenses	$1,225

UNFORTUNATELY, these classifications do not lend themselves to analysis in determining the probable effect of further inflation upon the costs of the industry. They are, accordingly, split into the following types of expenditures:

	Millions
Fuel	$ 405
Salaries and Wages	388
Maintenance—Excluding Labor	105
Miscellaneous	327
Total Operating Expenses	$1,225

The cost of fuel is the most important by far of the operating expenses incurred by electric utilities. During 1944 approximately 68 per cent of all electric energy pouring into the public supply was generated by fuel consumption and 32 per cent by falling water. Exclusive of the small amount of waste wood consumed in electric generation, all fuel-burning plants contributing to the public supply used 82,310,000 tons of coal or coke, 20,810,000 barrels of fuel oil, and 359,500,000,000 cubic feet of natural gas. Reduction of all three fuels to a coal-equivalent basis shows that coal or coke represented more than 81 per

1944 Income Account of All
Privately Owned Electric Utilities

	Actual		Adjusted	
	Millions Of Dollars	*Per Cent*	*Millions Of Dollars*	*Per Cent*
Total Revenues*	3,080	100.0	3,080	100.0
Operating Expenses	1,225	39.8	1,225	39.8
Depreciation	309	10.0	309	10.0
Taxes	703	22.8	592	19.2
Total Operating Deductions	2,237	72.6	2,126	69.0
Gross Corporate Income	843	27.4	954	31.0
Interest and Other Fixed Charges	334	10.8	334	10.8
Net Income	509	16.6	620	20.2
Preferred Dividends	125	4.1	125	4.1
Balance for Common and Surplus	384	12.5	495	16.1

*Combined operating and nonoperating revenues.

cent of the fuel, exclusive of wood, consumed in the generation of electric energy last year. And since the amount of anthracite so consumed is negligible, this "coal or coke" proportion primarily means bituminous coal.

Unfortunately, from the standpoint of utility fuel costs under inflation, the bituminous industry is not only highly unionized but the head of the United Mine Workers has shown both a disposition and an ability to secure frequent wage boosts for his members. More than that, having made substantial contributions of union funds to political campaigns in the past, he has demonstrated that he and his members are factors to be weighed in plans for political success.

If wages were not so important an element of cost in the production of bituminous coal, this unionization and forceful leadership of its miners would not now be so serious. But in 1944 these miners received approximately 60 per cent of the average mine-mouth selling price of the coal they dug—$1.60 of the $3 per ton which the industry received for its output.

In view of this status of bituminous labor, it seems obvious that UMW members would demand and receive corresponding wage increases as the cost of living rises, regardless of the ability of the bituminous industry to pay. And, if this vital industry is not to be reduced to a state of wholesale bankruptcy and its output sharply reduced, the electric and gas utilities and the railroads of the country, which use nearly half the soft coal mined each year, would have to pay proportionately more for it. Fuel costs, then, represent one of the weakest points in the armor of privately owned electric utilities for protection from the ravages of inflation.

Although not so strongly unionized as bituminous miners, utility workers have shown a disposition to demand wage increases as the cost of living mounts and to strike if they don't get them. Employees of Consumers Power Company were on strike for nearly a week in Michigan during the fall of 1945, and operating employees of Consolidated Edison threatened to stop service in New York city if wage demands were not met.

LIKE many other industries, electric utilities suffered from a shortage of man power during the war. The number of employees engaged in electric operations alone decreased from 242,750 in 1939 to 201,275 in 1944, or by 17.1 per cent. At the same time, due in part to the need of overtime work, electric operations payrolls increased from $339,546,200 in 1939 to $387,750,000 in 1944, or by 15.1 per cent. In other words, where the average annual pay per electric operations worker was roughly $1,400 in 1939, it had increased to around $1,926 by 1944. Should workers returning from the armed forces and war plants be reëmployed to bring electric operations employees up to the level of 1939, while 1944 pay levels remain in effect, the electric operations payroll of the industry would be raised to $467,650,000, or by more than a fifth.

The foregoing calculations, it will be noted, are based on 1944 payrolls, applied to 1939 employees, and do not give effect to any further pay boosts resulting from higher living costs. Yet, with the increasing unionization of electric utility workers and the evident bid being made by official Washington for the labor vote in 1946 and 1948, it seems reasonable to assume that any further increases in the cost of living will bring pay boosts to these workers. And, when it is realized that wages and salaries consumed more than 12½ cents of every revenue dollar received by privately owned electric utilities in 1944, the adverse effect of further substantial pay increases to these fixed-rate enterprises becomes evident.

MAINTENANCE, the third of the expenditure classifications of electric utilities, is a hybrid. It is comprised of the cost of materials and supplies used to keep utility systems in operating condition and the wages of the workers who devote these goods to that end. Accordingly, while the maintenance expense of all privately owned electric utilities totaled $186,000,000 last year, it has been arbitrarily assumed herein that $81,000,000 of that sum represented the cost of labor and $105,000,000 the cost of the materials and supplies it used; and, since the cost

of labor involved in maintenance has been included in the "salaries and wages" classification, only the cost of materials and supplies consumed in maintenance is now given consideration.

Yet, the National Industrial Conference Board recently has estimated that salaries and wages have comprised 66 per cent of total national income over the past sixteen years. This means that the cost of labor, including the compensation of all employees from the highest executives to the muscle-bound flunkies, constituted two-thirds of the final net values of all goods and services into which it entered. Obviously, then, any wage increases based on the rising cost of living of workers engaged in producing the materials and supplies utilized by electric utility maintenance employees will bring a corresponding rise in their cost.

THIS brings us down to the fourth and last general classification of electric utility operating expenditures —their miscellaneous operating costs, which totaled $327,000,000 in 1944. The various items composing this group of costs are both tangible and intangible. Some of them are priced on the basis of long-term contracts and others on day-to-day market fluctuations. Included are rent and insurance, legal and accounting fees, ink and lead pencils, scratch pads and annual reports, SEC registration fees and security certificates. In the absence of an exhaustive analysis of all outlays and contracts, it is impossible to say which of them will be affected by inflation. But suppose we take a chance and assume that half of these expenditures will be boosted by increases in the cost of living.

We are now ready for a recapitulation. If our calculations and assumptions are correct, we have a total of $1,061,000,000 of electric utility outlays for operation alone on the basis of 1944 results that are vulnerable to any further inflation, or 86.6 per cent of total operating expenses. Here they are:

	Millions
Fuel	$ 405
Salaries and Wages	388
Maintenance Materials and Supplies	105
Miscellaneous Expenditures	163
Operating Costs Vulnerable to Inflation	$1,061

HOW much further inflation must we have to erase all common stock dividends and contributions to surplus? Since the adjusted balance available for these purposes in 1944 was $495,000,000, an increase of 46.7 per cent in the combined costs of fuel, wages and salaries, maintenance materials and supplies, and miscellaneous

¶ "ALTHOUGH *not so strongly unionized as bituminous miners, utility workers have shown a disposition to demand wage increases as the cost of living mounts and to strike if they don't get them. Employees of Consumers Power Company were on strike for nearly a week in Michigan during the fall of 1945, and operating employees of Consolidated Edison threatened to stop service in New York city if wage demands were not met.*"

operating costs as listed above would do the trick. How much of an increase in these operating costs would wipe out all chances of dividends of any character? An increase of $620,000,000, or 58.4 per cent, would be required. And how high would these expense items have to rise to cancel all dividend and interest payments? It would take a boost of roughly $954,000,000, or 89.9 per cent.

Fortunately, there are circumstances that would alleviate the adverse effects of inflation on the earning power of electric utilities. Companies like Pacific Gas and Electric, Washington Water Power, Duke Power, and Niagara Hudson Power with a high proportion of generation facilities in hydro plants, where not only fuel costs are low but the amount of labor in production departments is small, would be less adversely affected than utilities of the type of Boston Edison, Detroit Edison, Philadelphia Electric, or Commonwealth Edison, which are large consumers of fuel. In addition, numerous utilities have clauses in their rate contracts which protect them from rising fuel prices. Consolidated Edison of New York, for instance, is permitted increases of 5 mills and 2 mills, respectively, for each kilowatt hour consumed in homes and factories, for each 10 per cent rise in coal costs above the basic price.

BUT the greatest measure of relief to be afforded privately owned electric utilities faced with rising costs will come from reductions in their Federal tax liabilities. State and local taxes, which increased from $212,000,000 in 1939 to $235,000,000 in 1944, or only 11 per cent, are no serious burden to them. Their wartime tax worries have come from Federal exactions, which rose from $140,000,000 in 1939 to $468,000,000 last year—an increase of 234 per cent in only five years.

The Federal taxes of privately owned electric utilities are of three general types. First are the miscellaneous levies, like the 3.3 per cent excise on energy sold at retail, and those on purchases of gasoline and other supplies. They totaled only $67,000,000 in 1944, or only 14 per cent of all Federal exactions. In all probability they will be continued and might even be increased if inflation assumed serious proportions.

Next came Federal income taxes, which totaled $191,000,000 last year or about 41 per cent of all Federal exactions from them. And, finally, Federal excess profits taxes, comprising 45 per cent of their total Federal tax bill, amounted to $210,000,000. In effect, then, approximately 86 per cent of all taxes levied by the Federal government against privately owned electric utilities were based on the net income remaining after fixed charges had been covered.

BUT this "road map" of Federal taxation has been revised under the new Revenue Act. Not only has the excess profits tax been eliminated but the rate of normal income tax assessment has been changed from a flat 40 per cent of the taxable income of all privately owned utilities to 38 per cent or 39 per cent, depending upon the size of revenues and profits. As a result, all taxable income will be subject to normal income taxes, with the previously designated excess profits becoming normal income. Under this ar-

rangement the normal income tax will be equivalent to approximately its 1944 actual figure, plus about 47 per cent of what was previously paid as excess profits tax.

Yet, because the normal income tax —as its name implies—is levied on income, which is calculated after all fixed charges and half the preferred dividends have been paid, it provides an escape valve for privately owned electric and gas utilities suffering from a severe attack of inflation. Just as you don't buy automobile license plates if you don't own a car, utilities earning no more than their fixed and half their preferred dividend requirements (provided they pay them) will not be required to pay Federal income taxes.

On the basis of 1944 operating results, with Federal taxes adjusted to provisions of the new Revenue Act, privately owned electric utilities will have a backlog of $302,000,000 of Federal exactions annually to help them carry through any period of inflation. Accordingly, unless the purchasing power of the dollar starts taking fancy nose dives, it would not appear that even the common stockholders of these fixed-price industries have much to fear from any degree of inflation we are likely to experience in the United States.

It Could Only HAppen in CAliforniA

THE PAcific Telephone & Telegraph CompAny recently stirred up An AlphAbetical hornet's nest. It sounded like AAAAAAAAAA.

The compAny hAtes A's. It Asked the staAte rAilroAd commission for permission to put unnecessAry A's At the bottom of its yellow clAssified directory listings.

Business firms like the A A A AAbey DAy And Nite Service And the A A-A A AccurAte StenogrAphers no longer would get top billing in the directory. And they don't like it. John R. JAckson, owner of the A A A AAbey So Forth CompAny, Announced he would oppose the telephone compAny's petition And would Ask the Aid of All the A people in the book.

On the other hAnd, the phone compAny sAys the A's Are becoming A pAin in the neck.

"One compAny in Los Angeles wAnts 20 A's in front of its nAme in order to be listed first in the moving And transfer section." An officiAl of the compAny moAned. "Now it hAs only 13, And seems to be worried. People even go into court to get their nAmes chAnged to things like A. A. A. A. A. A. A. AAron to be first, And then seek injunctions AgAinst others copying them."

If the compAny's petition is grAnted, the A crowd will be put directly under the Zylch's in the clAssified directory.

Government Utility Happenings

"MOVING day"—a 3-month process—has just about ended for the Rural Electrification Administration. The lending agency, located in St. Louis since March, 1942, now has transferred the bulk of its personnel into offices in the Agriculture Department.

Not all of REA's personnel are making the move. Nearly 300 staff members, most of them typists, clerks, and stenographers, refused to leave St. Louis for a variety of reasons. These are being replaced in Washington, chiefly with workers from other Federal agencies which are reducing wartime staffs.

REA's move was made gradually. Some two-score members of the full staff of more than 700 persons left for Washington in November. By January 1st, nearly 300 employees, including Administrator Claude R. Wickard and most of his division chiefs, were settled in the capital. All those remaining in St. Louis who intend to go to Washington will do so before the end of January.

Washington's high cost of living, the shortage of housing, and a general reluctance to move their homes lock, stock, and barrel were chief deterrents to the 300 workers who decided to stay in St. Louis. With the new Army record center preparing to open in the Missouri metropolis and employ a large local staff, the problem of finding other employment was not difficult. Clerks in the lower income brackets were afraid to risk Washington's notorious living prices. Since St. Louis also has faced a serious housing shortage since the early days of the war, others did not care to give up homes for which they had searched so long.

Most of the staff making the change swapped homes for apartments. Renting houses in Washington is out of the question these days, and it is almost as hard to buy. Indeed, had it not been for the assistance of the Federal Housing Administration, it is unlikely that they should have found even apartments. The FHA has helped to place the returnees in Federal housing developments, turning over to them apartments being vacated by departing Army and Navy personnel. Naturally, REA employees are not happy about giving up houses for small apartments, but they are doing surprisingly little griping about it.

The personnel and information sections of the agency are only too happy that the whole business is about completed. As soon as the Agriculture Department order directing the transfer became known in St. Louis, REA was swamped with telephone calls from employees, their friends, and their landlords. All wanted to know when the move was to start, who would leave first, how long it would take to effect the transfer.

MEANWHILE, there was much shifting of furniture in the Agriculture Department to make room for the returning agency. Department spokesmen insist that there will be plenty of space for all REA employees, but this phase of the transfer, at least, seems to have lagged a bit. Plans have been made to locate REA in the south wing of the huge Agriculture building, but at present its staff is working at desks almost all over the department.

Forthcoming reorganization of Federal agencies by the President, which was authorized by Congress just before Christmas, may remove REA from Agriculture supervision, it is rumored. It is

not too much of a secret that REA would welcome independent agency status. Agriculture has its own somewhat limited reorganization plan—the merging of REA, Farm Credit Administration, and other lending agencies within the department under the supervision of a special assistant secretary.

* * * *

CONSTRUCTION of a $95,000,000 multiple-purpose development project in the Payette river valley, near Boise, Idaho, has been proposed by the Bureau of Reclamation. According to a bureau report approved by Secretary Ickes, the Payette unit of the Mountain Home project would irrigate 230,000 acres of arid land and generate approximately 620,000,000 kilowatt hours of hydroelectric power annually.

The project provides for use of Boise river waters for irrigation purposes in the Mountain Home area by replacing these waters with a surplus diverted from the Payette river watershed.

Plans also call for construction of one reregulating dam and reservoir, and one storage dam and reservoir with combined storage capacity of approximately 1,337,000 acre-feet; two diversion dams; three power plants with a total capacity of 165,000 kilowatts; irrigation canals; transmission lines, substations, and "other facilities as may be necessary for the transmission of electric energy from the power plants to existing and potential markets."

The report has been submitted to the governors of Idaho, Oregon, and Washington, and to the Secretary of War for review.

* * * *

THE Rural Electrification Administration is both unwilling and unable to make agreements with private utilities for sharing rural power development, Administrator Claude R. Wickard reports.

In a recent speech in Atlanta, Mr. Wickard said that he has neither the authority nor the desire to "divide territory" with private companies. He also charged that private utilities are trying to confuse the public about REA. He said:

> It is difficult for some people to see that the REA is not just another utility. Recently I was asked why I am unwilling to sit down with the heads of private utilities for the purpose of dividing territory between the REA and the private utilities. I have absolutely no authority to come to any such agreement, and I would not want to use such authority if it were offered to me.
>
> The people themselves ought to make the choice as to how they wish to be served. I would not want to deny any group of people the right to own or acquire or operate facilities for their own benefit. That would be interference with free and private enterprise.

He recommended REA as the best means of obtaining electric services in farm areas, and charged that private utilities have been trying "to convey the impression that they have exclusive rights to all new construction of generating and transmission facilities." Private companies also are trying to stop self-liquidating government loans to REA, he added.

"Such action would put REA consumers where they would have no adequate defense against those people who have always charged whatever they thought the traffic would bear so far as the cost of wholesale power was concerned," he declared.

During a discussion which followed Mr. Wickard's talk, several REA officials accused private utilities of reducing rates in an effort to discredit REA.

* * * *

DEPARTMENT of Interior generating plants marketed 18,000,000,000 kilowatt hours of power — nearly 9 per cent of the national total — during the past fiscal year. This figure was revealed in a division of power report to Secretary Ickes on December 16th.

The report, which was prepared by Arthur Goldschmidt, director of the power division, did not indicate the total revenue produced by the sale of this energy. However, Mr. Goldschmidt said that 17,820,000,000 kilowatt hours were produced by the Bonneville Power Adminis-

tration, the Bureau of Reclamation, and Southwestern Power Administration, and of this amount 17,300,000,000 kilowatt hours were sold for a gross revenue of $45,500,000.

Power plants under the jurisdiction of Interior have increased their output of saleable power by nearly 14,300,000,000 kilowatt hours since 1940, and by 500,000,000 kilowatt hours in the past year. Mr. Goldschmidt said:

> A large percentage of this power went directly into war production. The fact that we had some major installations operating at the beginning of the war and that others were nearing completion made possible many of the great war industries of the country, particularly those in the Northwest. From the Columbia river projects alone, 7,300,000,000 kilowatt hours were delivered to war industry during the past fiscal year.
>
> The Department of Interior is now marketing power from the largest aggregate of hydroelectric capacity in the world, including power which is generated at dams operated by the Army Corps of Engineers.

The investment in facilities at projects from which the department markets power, he added, is now approximately $425,000,000, on the basis of tentative estimates.

* * * *

WITH half a year still to go, Rural Electrification Administration already has committed practically all of the funds appropriated by Congress for loans during the current fiscal year. By January 1st, 21 states already had received all the funds to which they were entitled by the REA budget, Administrator Claude R. Wickard announced recently.

Congress authorized REA to lend $200,000,000 during the fiscal year ending June 30, 1946. More than $127,000,000 of this amount already has been loaned, and REA has applications for additional loans totaling $190,000,000, Mr. Wickard said. This would leave applications for loans totaling $117,000,000 which cannot be covered by currently authorized lending funds.

By October 1, 1945, REA had granted loans totaling $619,323,631 to 941 borrowers over a 10-year period, Mr. Wickard added. Borrowers had repaid $99,788,598 in principal and interest.

REA borrowers are operating more than 437,000 miles of rural power lines and are serving 1,344,000 farms and other rural establishments.

* * * *

WARTIME relaxation of restrictions on natural gas operations has been suspended by the Federal Power Commission. In a recent notice directed to all natural gas companies, FPC announced that (1) unauthorized construction of facilities will no longer be tolerated; (2) applications for piecemeal construction on extensive extensions of facilities will not be approved.

During the war the commission followed a policy of granting temporary certificates of convenience and necessity for natural gas projects whenever materials and equipment for such construction became available. This policy was justified by the urgent and increasing demands for fuel for war industries. According to FPC staff members, the commission also overlooked the action of some companies in extending facilities first, and applying for certificates later.

Materials now are more easily obtained and the urgency of the situation ended with the war, FPC holds. "Appropriate action" is promised in case of future unauthorized construction or operation of facilities. The warning continued:

> The commission . . . believes that the natural gas companies should now be able to plan their construction programs for the reasonable future so as to avoid the filing of multiple applications involving portions of what are essentially single extension projects. Intermittent applications for piecemeal construction are costly in time and money. Moreover, proper planning and timely application for authority to construct new facilities will reduce so-called emergency applications under § 7 of the Natural Gas Act, and thus provide for adequate capacity and service. . . .
>
> The commission recognizes the possibility that natural gas companies may be faced with real emergency situations, and is prepared to act promptly to enable companies to deal with such contingencies when shown to exist and where the public interest demands emergency action.

INLAND EMPIRE RURAL ELECTRIFICATION, INC., of Washington will greatly extend its distribution system during the coming year as a result of a recently approved REA loan of $515,000. Chief item of construction scheduled is the building of 500 miles of distribution lines to serve 600 new farm accounts in Spokane, Whitman, and Garfield counties. Most of this construction will be in hitherto isolated areas which have never had power facilities, it was reported.

* * * *

PROPOSED flood-control and hydroelectric projects in Virginia now are being studied by a special board of investigators on behalf of the state. The board, recently appointed by Governor Darden, is composed of professors of engineering of three Virginia colleges.

Besides going over reports by the Army's Corps of Engineers on prospective projects, the new group will study possible tax losses in the areas of proposed dams, the compensation to be paid to landowners, and the extent of lands to be flooded. The board will report to the governor in "layman's language."

Its first investigations will include the flood-control and power projects proposed by the Engineer Corps on the Roanoke and James rivers.

* * * *

HEARINGS on the long-debated St. Lawrence seaway project got under way before a special Senate committee as Congress reconvened after the holiday recess. The Senate group, a subcommittee of the Foreign Relations Committee, will consider a bill recommending approval of the project by a majority vote of the Senate and House.

The Senate, jealous of its treaty-making powers, thus far has refused to consider the proposed St. Lawrence development other than in the light of a treaty, requiring a two-thirds majority for passage.

It is considered unlikely that the new hearings will permit a simple majority of both houses to approve the project.

Senator Hatch (Democrat, New Mexico) is chairman of the subcommittee. Other members are Senators Hill (Democrat, Alabama), Tunnell (Democrat, Delaware), LaFollette (Progressive, Wisconsin), and White (Republican, Maine).

Former President Hoover negotiated the seaway development in the form of a treaty, which was turned down by the Senate in 1934.

* * * *

THE New Jersey Chamber of Commerce last month reiterated its opposition to a proposed Federal plan to make the St. Lawrence waterway a navigation lane to ports on the Great Lakes. J. K. Hiltner, chairman of the chamber's industrial traffic committee, described the project as "harmful to the interests of New Jersey," with New Jersey taxpayers having to contribute approximately $60,000,000 estimated as the total cost.

* * * *

TWIN proposals to create a Columbia Valley Authority now are before congressional committees. The Senate Commerce Committee is studying the measure proposed by Senator Hugh B. Mitchell (S 1716), while the House Rivers and Harbors Committee has a companion bill (HR 5083), which was introduced by Representative Henry M. Jackson.

Senator Mitchell and Congressman Jackson, both Democrats of Washington, have asked for early hearings on the proposals. They claim that President Truman has informed them that he favored early adoption of such legislation and unified use and improvement of natural resources of the Columbia river watershed.

The bills would create a 3-man board patterned after the Tennessee Valley Authority. The new authority would be empowered to generate and distribute hydroelectric power, irrigate arid land, improve navigation facilities, prevent floods, conserve soil, and protect forests and wild life.

Wire and Wireless Communication

DEVELOPMENT of frequency modulation (FM) and television is confronting the radio broadcasting industry with the most perplexing problems of its 25-year existence. The complexities of these problems are outlined in an article by Joseph M. Guilfoyle in the December 26th issue of *The Wall Street Journal*.

Broadcasters are worrying chiefly over the costs of utilizing these two innovations in an industry already struggling with increases in wages and ordinary operating expenses. According to some experts, FM, which is static-free radio, will cost more than $50,000,000 to install, with television installations running perhaps twice as much. Advertising revenues cannot be expected to increase sufficiently to cover any great portion of this added burden.

While time sales during 1945 showed an increase over the previous year and probably will continue good, there is indication that the industry's advertising income is leveling off. Mr. Guilfoyle explains:

> The reason broadcasters' business is not likely to get much better is simple. The only thing they have to sell is time—the sixteen or eighteen hours a day when the public is listening to its radio. Unlike the maker of a washing machine or radios, the broadcaster cannot add a third shift or build a new plant when demand begins to outstrip the supply of his commodity.

Increased rates are being considered by some broadcasters, but the leading networks are not contemplating any early action along these lines. Although individual station rates have increased whenever a station added more listeners through a jump in power or expanding population in its area, the networks have had no general rate increases for several years.

DURING the change over from the present standard band broadcasting to FM, now getting under way, the industry will have to operate two transmitting services. Even though a program is carried by both standard and FM stations, broadcasters won't be able to charge advertisers more since they will not be reaching any larger audiences. It is estimated that 95 out of every 100 homes in most markets have ordinary wave-length radios, so FM will add little to the total audience.

On the other hand, the marketing of FM sets will gradually reduce the number of listeners with ordinary sets, since no set can tune in both types of broadcasts.

The period of replacement is estimated at five years or more.

During this time broadcasters may not be able to use the same music for both FM and conventional type broadcasts. James Petrillo's American Federation of Musicians has ruled that the same musical programs cannot be used for both types of broadcasting unless the company hires a similar number of stand-by musicians. The networks have stopped duplicating standard musical programs over their FM facilities, and they are fearful that the Petrillo policy may

spread to actors and other professional radio performers.

The industry expects that it will be at least five years before television can support itself. Estimated cost of a first-class television station for a major city has been set at more than $300,000, about $100,000 more than the cost of a comparable standard broadcast station. Costuming, scenery, and programming expenses would be additional.

* * * *

WESTERN UNION TELEGRAPH COMPANY has announced that it will adopt a new microwave radio relay system which has been developed by Radio Corporation of America. The telegraph company will spend several millions of dollars during the next five years or so to install the system, the announcement stated.

The RCA development is reported to differ entirely from the pulse-time-modulation system of the International Telephone & Telegraph Company. RCA claims that its system is simpler, requiring less equipment at relay towers, and that it is cheaper to operate and possesses greater freedom from distortion and interference.

Both systems use very high-frequency radio waves which travel in straight lines and require the use of relay towers spaced about 30 miles apart. Eventually, it is expected that they will do away with all telegraph poles and lines.

* * * *

OFFICIALS of the Rural Electrification Administration on December 18th said they hope that development of carrier telephones on rural power lines eventually will link the 191,330 Arkansas farms which, during the 1940 Federal census, were without telephone service.

Tests made near Jonesboro on December 17th were the first for continuous operation under working conditions, although many field tests of the equipment were made over REA-financed lines before the war. In the Arkansas test, carrier telephone equipment was installed by the Southwestern Bell Telephone Company of St. Louis for use in homes of four members of the REA-financed Craighead Electric Coöperative of Jonesboro.

REA officials said they believe many of the 32,616 rural consumers in the state, who are served by the 20 REA borrowers operating 10,080 miles of line, are outside areas reached by rural telephone lines.

They expressed hope that the Arkansas test will prove the practicability of providing telephone service over the same lines that deliver electricity to rural homes. Approximately 20 per cent of Arkansas farmers have central station electric service.

Although engineers in charge of the project warned that the carrier telephone is in the experimental stage and that further experiments will be necessary before it can be used commercially, the new equipment promises to increase immeasurably the value of REA rural electric systems in the nation, officials said.

* * * *

TO enable GI's in Germany to talk with their homes, fifteen telephone men crossed the Atlantic by plane recently and are now in Europe to establish commercial overseas radiotelephone facilities between 8 German cities in the American zone of occupation and the United States. It was hoped to have this service, which is being established at the request of and with the coöperation of the U. S. Army, available before Christmas. Initially, service will be on a one-way basis from Germany to this country.

Technical and commercial personnel of the Long Lines Department of the American Telephone and Telegraph Company will arrange facilities for commercial telephone operation at Frankfort, Heidelberg, Bremen, Kassel, Nuremberg, Berlin, Stuttgart, and Munich.

Calls from the occupation zone will be handled at first only at a single center in each German city served. In the interests of fairness, calls will be limited

to three minutes and probably it will be necessary to book them several days in advance. The rate for calls to any point in the United States will be $12.

Calls placed from the American zone of occupation in Germany will be subject to the regulations of the theater command and initially will be restricted to military personnel. Both because the local telephone service is not operating and because of the difficulty of locating persons in the zone, it will not be possible at present to place calls from this country and arrangements for telephoning will have to be initiated abroad.

Two overseas radiotelephone circuits will be available to carry the voices of the GI's to their families and friends at home. Army radio transmitting and receiving equipment at Frankfort will be operated by the telephone company and from the Army with the rank of Lieutenant Colonel early last month after land lines to the other German cities connected. Additional equipment to provide this service has been furnished by the Bell system and shipped abroad.

The Long Lines Department staff which flew to Germany to establish the new radiotelephone service was headed by R. R. Mallory, who was discharged from the Army with the rank of Lieutenant Colonel early last month after serving in the North African and Italian campaigns, and in France and Austria with General Patch's Army. Once the service is set up by the Americans, Army-approved German civilians will be hired to assist in all phases of the work.

The Bell system reported that since the restoration of radiotelephone service to many overseas points, American servicemen and women stationed abroad have called home in such numbers that the volume of radiotelephone calls has tripled over prewar days. Particularly heavy traffic is now being experienced with Great Britain, France, Italy, Switzerland, The Netherlands, Panama, Hawaii, and Australia.

* * * *

THE Bell system on December 19th announced plans for extensive service trials of mobile radiotelephone service along three intercity highway routes totaling nearly 1,000 miles. The routes are those between Chicago and St. Louis, via Ottawa, Peoria, and Springfield, Illinois; between New York, Albany, and Buffalo; and between New York and Boston.

When these services are established it will be possible for any suitably equipped vehicle on the highways along these routes or any boat on adjacent waterways to make and receive calls to or from any telephone connected to lines of the Bell system. Transmitting and receiving stations required to provide the 2-way voice communication service will be located along the routes.

Applications to serve the Chicago-St. Louis route have already been filed with the Federal Communications Commission by the Illinois Bell Telephone Company. It was expected that applications for the other routes would be made soon. However, operation of the new service will not begin until several months after the FCC has authorized construction. This interval is required to permit erection of transmitter-receiver stations and to equip vehicles with sets.

Highway mobile radiotelephone service, which will make it almost as easy to telephone to or from a properly equipped vehicle on the road as between any two regular telephones, will operate like this:

Calls will be handled by mobile service telephone operators. The conversations will travel part of the way by telephone wire and part of the way by radio. If a caller in Chicago wants to talk to the occupant of a certain automobile somewhere between Chicago and St. Louis, he will first reach "Long Distance," ask for the mobile service operator, and give her the call number of the vehicle. She will route the call over telephone wires to one of the transmitting-receiving stations along the highway which sends the signal on to the vehicle by radio. The car occupant will receive an audible and visual signal indicating that he is wanted. He then will pick up his dashboard telephone and answer. Under his fingers as

he holds the telephone handset will be a "push-to-talk" button which will permit him to switch from listening to talking.

THE occupant of a mobile unit will be able to originate calls merely by picking up his telephone, listening to make sure the circuit is not in use, and pushing the "talk" button. This will signal the mobile service operator and she will "come in on the line." He will give her the telephone number he wants and the call will go through.

It is planned to make the trials under actual operating conditions. A number of companies, including truck lines, bus lines, long-distance movers, utilities, and other organizations, have indicated a desire to participate in the test. Accordingly, it is expected that several hundred vehicles will be equipped initially to send and receive messages on the three routes.

Plans for Bell system mobile radiotelephone service on intercity routes are extensions of plans announced previously for urban mobile service.

* * * *

THE New York Public Service Commission, in a letter written by Chairman Milo R. Maltbie, notified the New York Telephone Company last month that it expected the company to reduce intrastate long-distance rates to the level of interstate toll rates recently announced by the American Telephone and Telegraph Company. All of the stock of the New York Telephone Company is owned by AT&T. He wrote:

> It would seem that the same rates for the same distance should be charged in intrastate service that the parent company is charging for interstate service and that your rates should be reduced accordingly. If there is any valid reason why this should not be done promptly, will you please advise the commission not later than the twentieth of December?

The revision of interstate long-distance rates by AT&T involves a reduction of about $20,000,000, of which approximately $17,000,000 will apply to message tolls and $2,700,000 to teletypewriter service.

Most of the AT&T reductions, the commission said, applied to distances in excess of 400 miles, which is the longest route within New York state. The only reduction up to 400 miles under the AT&T revisions, which are effective on February 1st, are for distances between 340 and 354 miles, where the interstate rate is reduced from $1.10 to $1.05, and for distances between 370 and 392 miles, where the rate is reduced from $1.15 to $1.10.

Some changes also are indicated in the AT&T tariff for the New York-New Jersey tolls up to 40 miles, where reductions of 5 cents each will be made at several points.

* * * *

A CIVIL suit charging antitrust violations in the manufacture and sale of television equipment was filed in New York city in the Federal court on December 18th by the government against five corporations and three individuals, in which they were accused of delaying the opening of a new field of entertainment and education.

The corporate defendants are Paramount Pictures, Inc.; Television Productions, Inc.; General Precision Equipment Corporation; Scophony Corporation of America; and Scophony, Ltd., London. All have offices in New York city. The individuals are Paul Raibourn, president of Television Productions; Carle G. Hines, president of General Precision; and Arthur Levey, president of the American Scophony Corporation and a director of Scophony, Ltd.

United States Attorney General Tom C. Clark and his assistant, Wendell Berge, in charge of the antitrust division, alleged that the defendants entered into a conspiracy whereby General Precision and Television Productions have complete control over the promotion, utilization, or the suppression of the Scophony inventions within the Western Hemisphere, particularly the United States.

The complaint said that between 1937 and 1939 Scophony, Ltd., obtained basic patents on two revolutionary systems of television.

Financial News and Comment

By OWEN ELY

FPC Review of the Utilities' Financial Record

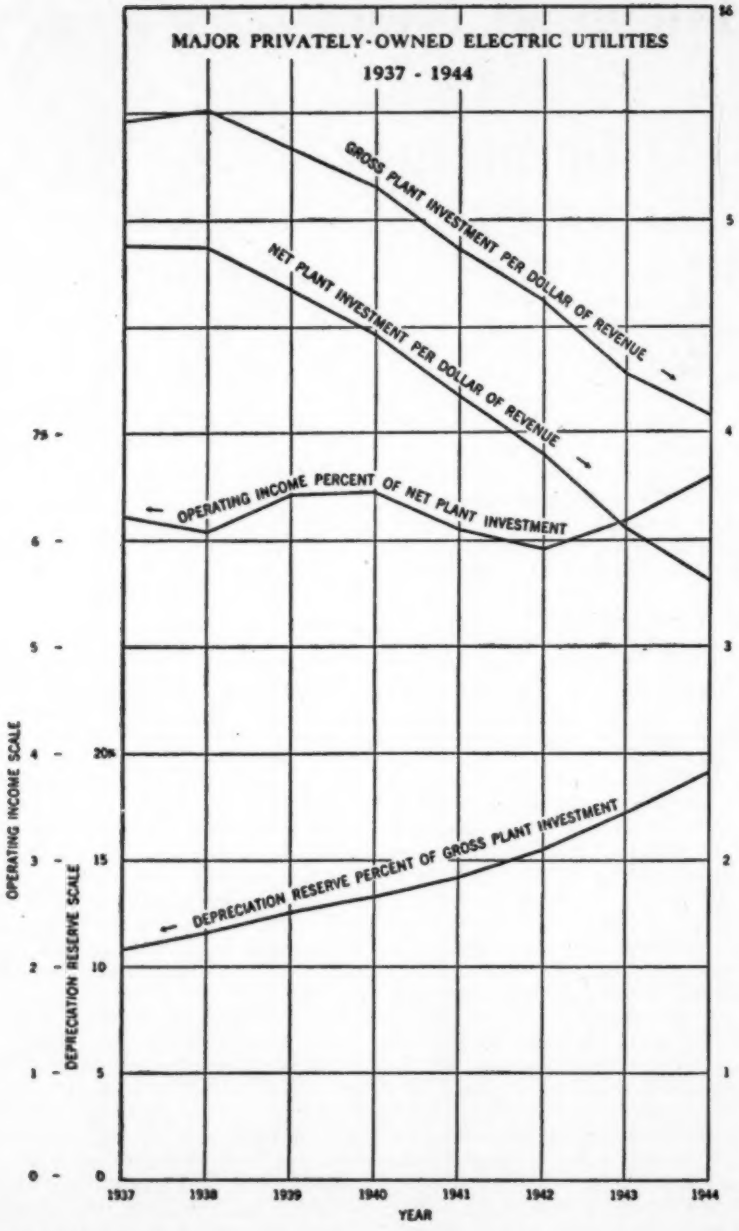
THE Federal Power Commission recently issued its bulletin on "The Financial Record of the Electric Utility Industry 1937-1944," from which the two accompanying charts are reproduced. (See pages 108 and 109.)

One of these charts indicates a 7-year gain in kilowatt-hour sales of 82 per cent, in revenues of 43 per cent, and in utility plant of 7 per cent, but does not include a trend line for net income which during the period dropped nearly $11,000,000, or over 2 per cent.

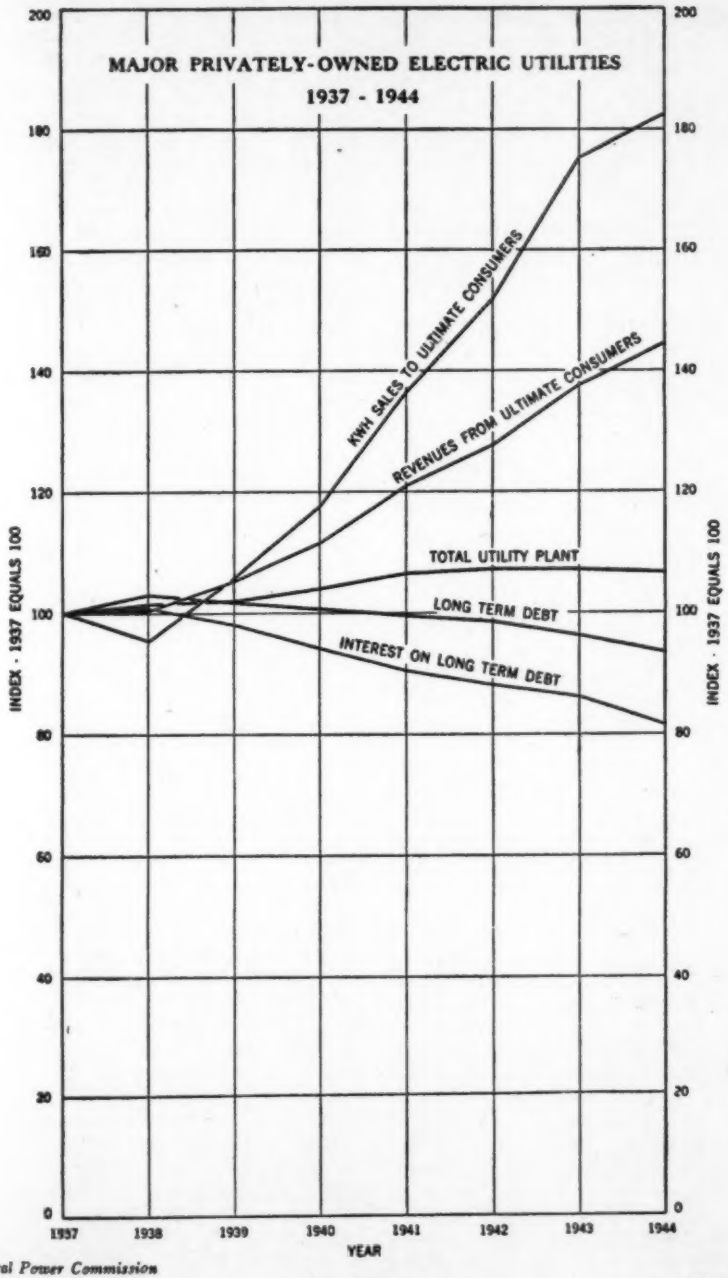
The plant account figures in the consolidated 1937-44 balance sheet for the electric industry are a little difficult to analyze. It would be interesting to have the actual amounts added to plant account for construction expenditures during the 7-year period, since the figures compiled by the Edison Electric Institute, the *Electrical World*, etc., are not very satisfactory. The yearly changes in plant account in the FPC balance sheet figures do not of course reflect plant expenditures, because of plant write-offs. During the wartime period 1941-1944, there was a net gain of less than 1 per cent in plant account despite an increase in capacity of over 10 per cent. This result was due to changes in the accounting methods for registering earlier investments, initiated or ordered by the FPC. These changes should be clearly indicated in the balance sheet, in order that investors and others may be properly informed. This could easily be done by the method formerly used by the Interstate Commerce Commission in reporting plant account of the railroads. For many years the plant account remained frozen at the 1907 level, when the ICC began its investigation and revision of the figures; additions and betterments made in subsequent years were indicated in a separate item. In similar fashion, the original plant account for A and B utilities could be "frozen" at the 1935 level, before regulatory adjustments of the old plant account began to affect the figures. Additions and betterments made since that time would then indicate the real growth of plant account, while the write-offs would be reflected in the decreasing amount of the 1935 figure.

THE amount of the write-offs can of course be computed roughly from the special reviews issued from time to time by the FPC. In its recent bulletin, the commission pointed out that in 1944 some $400,000,000 of amounts in excess of original cost was eliminated, while "unclassified and undistributed" plant was further reduced by a substantial amount. For the entire 7-year period, the review stated, some $800,000,000 of "inflation" was eliminated from the utility plant accounts, of which about $700,000,000 was accounted for by FPC orders.

This would seem to indicate that plant account increased during the seven years by about $1,702,000,000, of which $800,000,000 was canceled by the reduced value assigned to the pre-existing plant. During the 7-year period total construction expenditures as compiled by the EEI aggregated $3,451,000,000 but this included municipal plants and rural coöperatives as well as electric utility companies; replacements



Federal Power Commission



Federal Power Commission

were also included, which substantially explain the wide difference in the figures.

Regarding the analysis of plant account as between different services, the FPC pointed out that "while at the close of the year unclassified investment in plant was still approximately one billion dollars, progress in proper accounting for these items was so advanced that more than 90 per cent of the unclassified amounts at the end of the year was contained in the accounts of only 11 large utilities."

The FPC composite balance sheet does not distinguish between reserves for depreciation and those for amortization of plant, which are thrown together, so that it is difficult to analyze the figures. The composite reserve has nearly doubled in the last seven years, increasing from $1,495,249,000 in 1937 to $2,821,973,000 in 1944; the ratio to the utility plant has increased from 10.8 per cent to 19.1 per cent.

DOES this rapid uptrend in total reserves indicate that present depreciation accrual rates are too high? Perhaps not if the utilities are to replace a substantial amount of obsolete generating equipment in the next few years; and the results of atomic power are a question mark in the future. However, the rapid increase in the reserves makes it imperative for both the utilities and the commissions to clarify the confused philosophy back of depreciation accounting, from a regulatory as well as an engineering viewpoint.

The FPC points out that the ratio of long-term debt to gross plant account has declined from 50 per cent in 1937 to 43 per cent in 1944. This ratio is infrequently used—the standard yardstick is the ratio of debt to *net* plant. On this basis the improvement was less striking, the ratio dropping from 56 per cent to 54 per cent. During the 7-year period, despite substantial changes in other items, the capital structure changed very little:

	1937	*1944*
Long-term debt	47.8%	46.5%
Preferred stock	14.8	15.5
Common stock equity	37.4	38.0
Total	100.0%	100.0%

The commission states that the percentage ratio of total utility operating income to net utility plant, "which ratio is roughly comparable to the so-called 'rate of return,' as computed on the basis of book figures," increased from 6.2 per cent in 1937 to 6.6 per cent in 1944. This increase was undoubtedly due to the commission's policy of marking down plant account to "original cost when first devoted to public service." Thus a substantial amount of capital has been eliminated from the utilities' books which represented bona fide investments by security holders. Naturally, with this elimination of capital the rate of return would ostensibly be higher. Moreover, the commission makes no allowance in its calculation for working capital, which is usually added to net plant account in determining "fair value" on an engineering appraisal basis. Without attempting to make a technical analysis of this factor it may be mentioned that, if current assets had been added to net plant account, the earnings ratio would have been approximately the same in both 1937 and 1944, at 5.7 per cent.

Latest Earnings Report Of the FPC

BECAUSE of special interest in the postwar trend of utility earnings, the FPC monthly bulletins on sales, revenues, and income of privately owned class A and B electric utilities are being more closely watched than usual. The latest bulletin, issued December 21st, showed results for the month of October and for the twelve months ending October 31st. In that month, kilowatt sales showed diverse trends, with residential service up 9.7 per cent and commercial 6.7 per cent, while industrial sales dropped 16.2 per cent and other sales to ultimate consumers 5.8 per cent. Total sales, including amounts wholesaled to other electric utilities, were down 6.2 per

cent for the entire month of October.

Revenue figures made a better showing, with an over-all gain of .2 per cent; the increase of 7.5 per cent in residential revenues and 8.3 per cent in commercial were sufficient to balance the dip of 9.6 per cent for industrial service, the decline of 4.6 per cent in sales to other electric utilities, and the 9 per cent drop in the small item of "other electric revenues."

In the expense items, fuel savings continued to be outstanding, this item being 11.7 per cent under the previous year. Salaries and wages were up 3.2 per cent and other expenses gained 6.4 per cent, while depreciation increased .7 per cent. Taxes dropped 18.1 per cent, presumably due to heavy charge-offs of premiums on bonds and preferred stocks which were refunded. Many companies set up offsetting items, "charges in lieu of tax savings," and these items were probably included in amortization of debt discount, etc., which this year showed a gain almost equal to the drop in taxes. Interest charges were down 8.6 per cent, but this saving was small as compared with the jump in the amortization item. Net income showed an increase of 8.1 per cent over last year; but, in view of the many crosscurrents at this time, the gain has less significance than under more normal conditions. Moreover, as pointed out in a previous issue, the utilities have been unusually favored in their hydroelectric operations by abundant water supply throughout the country.

The statement for the twelve months ending October 31st has less significance, since it covers both the wartime and postwar period. Net income gained 3.4 per cent over the earlier period.

Changes in Balance Sheet Accounting

An interesting innovation appeared in the balance sheets of Sioux City Gas & Electric Company and Iowa Public Service Company in the prospectus of the former in connection with a recent sale of common stock. All items pertaining to the common stock equity — the par amount of the common stock, the premiums on common and preferred stocks, and the earned surplus — were grouped together, with a total amount reflecting the equity for the common. Another total was also given for preferred and common stock equity, thus making it easy to compare bonded debt and total stock. Security owners and students of finance are interested in capital ratios, and this facilitates noting the approximate relations of the items at a glance. Ordinarily, of course, the surplus figure appears at the bottom of the balance sheet as though it were unrelated to the common stock. This reform in accounting procedure might well be generally adopted.

Another needed reform is to segregate the reserves for depreciation and property amortization from the miscellaneous reserves (such as injuries and damages), and bring them over to the asset side, placing the total reserve under the utility plant account as a deduction, to arrive at net plant account. This practice is universally followed by industrial companies and just why the railroads and utility companies have not adopted it is somewhat of a mystery. The fault may rest with the regulatory commissions which have set up accounting classifications.

The present system results in making total assets and total liabilities merely a fictitious balancing figure rather than a real indication of total value in the company. (It might be argued, of course, that deferred debits and credits are also fictitious, but these items are usually so small as to have a negligible effect on the aggregate figure.)

In every comparison sheet or other analysis of a new security offering, the net plant account is always worked out. The financial manuals also report it along with the ratio of net operating revenues to net plant account. But the prospectus of a new security issue, which is supposed to be for the guidance of buyers, shows neither figure.

Retiring Noncallable Securities Of Holding Companies

In its recent order requiring American Power & Light Company to pay the redemption price of 110 to retire its debenture 6s of 2016, and a special price of 115 to retire the Southwestern Power & Light debenture 6s, the SEC virtually created a new policy with respect to such retirements—that the intrinsic value of such a security should be taken into account.

Southwestern bonds could have been called at 110 on March 1, 1947, but the commission somewhat arbitrarily added five points to the call price as compensation for redemption some fourteen months ahead of time. Blanket approval was obtained from Federal District Judge E. A. Conger for redemption of both issues at 110, Southwestern bondholders getting a receipt entitling them to whatever additional amount "the SEC should deem fit." Since the Southwestern issue was comparatively small American Power & Light has apparently made no protest regarding the rather substantial premium over the 1947 call price.

The new policy raises interesting questions as to the method of retiring noncallable preferred stocks of holding companies. The principal instances are American Light & Traction and Public Service of New Jersey. A substantial block of American Light preferred is held by Allied Chemical, and it is rumored that the latter company may ask as high as $40 a share as a redemption price, instead of the par value figure of $25 to which it would ordinarily be entitled in dissolution. This would mean a yield basis of 3.75 per cent, which is the approximate "going rate" for high-grade public utility preferred stock issues.

Public Service Corporation of New Jersey has four noncallable preferred stock issues outstanding with dividend rates ranging from 5 to 8 per cent. Naturally, it would be very beneficial to common stockholders if the company could be merged with Public Service Electric & Gas and the preferred issues retired at par "in dissolution." But the new trend in regulatory philosophy at Philadelphia seems to make it doubtful whether such a plan is feasible, in connection with the eventual integration program for the system.

MANUFACTURED GAS COMPANY STOCKS

	Where Traded	*Price About*	*Latest Earnings*	*Previous Earnings*	*Price-Earn. Ratio*	*Div. Rate*	*Yield About*
Bridgeport Gas Lt.	C	27*	$1.46a	$1.48a	18.4	$1.40	5.2%
Hartford Gas	O	44	2.10a	2.26a	21.0	2.00	4.6
Brockton Gas Light	O	15	.73a	.70a	20.7	.75#	5.0
Providence Gas	C	10	.47a	.53a	21.3	.50	5.0
Haverhill Gas Light	O	28	1.80c	1.62c	15.6	1.40	5.0
Springfield Gas Light	O	29	1.84a	1.42a	15.8	1.60	5.5
Fall River Gas	O	35	2.17c	2.28c	16.1	1.80	5.2
Portland (Me.) Gas Light	O	8	.90	1.44f	8.9	.75	9.4
Brooklyn Union Gas	S	33	3.22g	2.38g	10.3	1.60e	4.8
Birmingham Gas	O	9	1.26b	1.18	7.2	.60**	6.7
Savannah-St. Augustine	O	19	1.42a	1.45a	13.4	1.00	5.3
Jacksonville Gas	O	27	2.86a	2.56a	9.4	1.00	3.7
Averages					14.9		5.5%

S—Stock Exchange. C—Curb Exchange. O—Over counter. *Nominal (quoted 26-30). **Payments irregular (60 cents in 1943, 30 cents in 1944, and 60 cents in 1945). #Irregular. †Offered to public in February, 1945; 25-cent dividend paid July 1st and October 1st. a—Twelve months ended December 31, 1944, and 1943. b—Twelve months ended June 30th. c—Twelve months ended October 31st. e—Quarterly rate raised from 25 cents to 40 cents November 1st. f—Eleven months ended November 30, 1944 (calendar year $1.31). g—Twelve months ended September 30th.

What Others Think

Committee Hears SEC Chairman On Holding Company Act

STATEMENTS presented by operating utility executives at the recent hearings of the Boren subcommittee of the House Interstate and Foreign Commerce Committee, relative to possible amendments to the Holding Company Act, were reviewed in this department of the December 20th issue of PUBLIC UTILITIES FORTNIGHTLY.

At later sessions of the committee, Ganson Purcell, chairman of the Securities and Exchange Commission, explained the commission's interpretation of the section of the act relative to public power bodies, and also made a statement, from SEC records, as to the sales of holding company subsidiaries, both to public bodies and to private interests.

At the beginning of his testimony, Chairman Purcell outlined the nature of the act, with special respect to the section which exempts public agencies from the provisions of the act. Referring to the Omaha case (Nebraska Power Company), in this connection, he said:

> . . . It is, of course, clear from the very nature of the transaction involved in the Omaha case that the question of public power *versus* private ownership is injected into the public policy. It is also clear to me, from press reports of the hearings held during this past week, that that general policy, question of public *versus* private ownership, has been brought forth in all of the hearings. What I would like to do is to make it quite clear for the committee at this time, in a general way, what the position or lack of position of the Securities and Exchange Commission may or must be under the statutes which we administer.
>
> The committee will recall that it was the sense of Congress when it enacted the Public Utility Holding Company Act of 1935, that the Securities and Exchange Commission should not enter the lists as a protagonist of one side or another in the controversy over public power. That was deemed to be, as the commission has always understood it, either a local issue to be decided by the states or a problem for other agencies of the Federal government to be handled as the Congress might decide under other statutes. The Congress foresaw that if a state government or the Federal government, either directly or through some instrumentality, chose to exercise its proprietary function by acquiring utility properties, it would be inappropriate that the exercise of this sovereign power of the state or Federal government should be subject to regulation by a different agency of government. Therefore, § 2(c) exempts the agencies of the Federal and state governments in categorical terms and without discretion in the commission from all of the provisions of the act. . . .
>
> . . . In view of the clear indication of congressional purposes to exclude from commission jurisdiction transactions in which the state or Federal government, acting in its proprietary interest, undertakes to acquire or operate electric and gas utilities, the commission in 1938 adopted its rule now known as Rule U-44(b)(3), which contains the provision which became applicable to the Omaha case . . .
>
> Now, as to the Omaha case, generally, the commission itself was first advised that the American Power & Light Company had determined to sell its Nebraska properties to public authorities in the late summer or early fall of 1944, last year, when conversations took place between members of our staff, company officials, and representatives of the prospective purchasers, relating to the question whether the commission would pass upon the proposed transfer. In about mid-October, the commission was advised that the form of the proposed transaction had become crystallized and was asked whether the transfer was an exempt transaction under Rule U-44. The matter was examined in the light of the statutory provisions which I have just summarized for you, and on October 17th, as you know, our advice was given that no application to the commission would be required.

IN presenting data from the commission's records, relative to divestment of operating utilities, Chairman Purcell stated:

> In the first place, one of the items which you were particularly discussing at the Oc-

tober 22nd meeting with the Treasury representatives was the extent to which tax revenues are or may be diverted from the Federal Treasury by reason of the acquisition by public bodies of public utility properties which are being disposed of by these holding companies subject to the Public Utility Holding Company Act of 1935, and of course in this particular connection the Nebraska situation itself is concerned. . . . I think it would be helpful, before taking up the Nebraska situation tax aspects, to present to you certain data showing all the dispositions of utility properties by companies subject to the Holding Company Act since its passage, with a breakdown as between dispositions made to public authorities and to private ownership, including other holding company systems. In this way some classification may be made of all the dispositions effective since the passage of the Holding Company Act, according to whether or not such dispositions resulted in withdrawing revenues from Federal taxation, or possibly in the issuance of tax-exempt securities. The summary at the bottom of the table shows that, disregarding a relatively small amount of partial dispositions to both public and private purchasers, dispositions to public authorities involved $293,500,274 of properties, whereas dispositions to private investors involved the rather staggering total of $4,053,719,313. . . . . the largest single disposition accounting for almost half of the total dispositions to the public authorities, involves the properties of the Tennessee Electric Power Company sold to the TVA in 1939. This disposition was in no sense occasioned by the Holding Company Act, but was rather one of the major steps in rounding out the TVA system. I have not prepared a similar itemization of the disposition into private ownership, but this information is available through June 30, 1944, in the tenth annual report of the commission, and will be brought down to June 30, 1945, in the forthcoming annual report.

I should point out that the figures presented here may be misleading without the following qualifications. In some instances the holding company owned only a minority interest in the common stock of the operating company, control of which passed out of the system. Thus, the figures which we are presenting are not indicative of the values of the holding company's interests. We believed that this was the proper basis upon which to prepare these data for the present purpose of the subcommittee; namely, to consider to what extent divestments under the Holding Company Act have had the effect of shifting electric and gas properties from private control and ownership where they were taxable, to public control and ownership where they would become tax exempt. I should also point out that some of the $4,053,000,000 of divestments to private investors comprise properties which have passed from one holding company system to another. Thus, this figure should not be taken to represent the extent to which operating properties have gone from holding company to independent private management.

In the past, numerous inquiries have been directed to the commission by municipal officials or other advocates of public power in a particular community (including sponsors of coöperatives) as to whether the commission has ordered a holding company to divest itself of the properties in their locality, and whether the commission will direct the company to sell the property to the particular public power entity. To such inquiries the commission has invariably responded with the explanation that, although § 11 of the Holding Company Act does not require the commission to direct divestments of nonretainable properties, the act does not authorize or permit the commission to require disposition of the properties in any particular way or to any particular purchaser. Within the framework of § 2, choices of that nature are left in the first instance to the holding company managements and, only as a last resort, the remedy is then for the commission to apply for enforcement of its order by a United States court. (I may point out here that there has thus far been no occasion for resort to this alternative remedy, thus there has been no occasion on which the commission has required that any particular operating property be transferred to any particular purchaser.)

In closing his testimony, the SEC chairman expressed it as his belief that the reason the data he had submitted indicate so small a figure for utility properties sold to public bodies, is due to the controls under the act.

He added:

. . . I should like to turn back for a moment to the statistics which I presented to you earlier, to mention that I am somewhat surprised to find that the dispositions by holding companies to public agencies have been as small as they have. You will note that the figures show that in the aggregate such dispositions do not approach in size the single transaction in which the city of New York acquired the transit properties of the Interborough Rapid Transit Company and the Brooklyn Rapid Transit Company. That acquisition involved properties with a carrying value of over $400,000,000. In order to make this acquisition, the city sold to investors 3 per cent corporate stock in the aggregate amount of $325,000,000, so that approximately $10,000,000 of annual tax-

free interest is being paid to investors.

Looked at against a transaction of this magnitude, the dispositions by holding companies to municipalities or other public authorities have been relatively inconsiderable, and I should like to hazard the guess that the reason why this is so stems in very large part from the regulatory provisions of the Holding Company Act. Among other things, the electric and gas utility companies have been compelled to undergo a financial housecleaning. The consequence is that by and large these companies have been put into first-rate financial condition. The operating companies now enjoy the benefits of cheap and ample credit. As a result, substantial savings in the cost of capital have been effected. Moreover, we believe that as a result of the enforcement of the Public Utility Holding Company Act of 1935, state regulatory bodies have been better able to regulate effectively.

These and other factors have resulted in cheaper and better service to consumers as well as greater protection to the interest of investors and the public interest, and as an end result, no doubt, have lessened the incentive to public ownership. I therefore suggest that whatever may be one's attitude concerning public *versus* private ownership, it must be recognized that the tendency toward public ownership of electric and gas utilities would be immeasurably stronger were it not for the greatly improved conditions in the electric and gas utility business which have been achieved by Federal regulation under the Public Utility Holding Company Act of 1935.

In the discussion of the position taken by SEC in the Omaha transaction, testimony was given by Milton H. Cohen, director of the commission's public utilities division. In citing the viewpoint of the commission on various aspects of that situation, he stated:

(1) The commission had no occasion whatsoever to consider the desirability of the transaction in any of its aspects. Mr. Purcell has pointed out that the statute calls upon the commission to stay aloof from the question of public against private ownership of utilities and to refrain from any attempt to regulate state power instrumentalities or any other state agencies.

Having found that the facts of the transaction brought it under § 2(c), the commission had no further authority to deal with the merits of the transaction.

(2) Similarly, the commission had no occasion to consider the price that the Omaha Electric Committee was paying to American.

Whatever views the commission or we on the staff might have had, if we had been required to consider the price . . . it seems obvious to us that the commission cannot tell a public agency of a state what amount to pay or not to pay for a utility property without coming directly to grips with one of the most crucial issues in the public *versus* private power controversy and without interfering with the state's functioning in connection with § 2(c). Were we to undertake to pass upon price from the point of view of the seller, we would be doing indirectly what we cannot do directly, since the effect of the determination would be either to permit or to forbid the acquisition.

(3) The commission had no occasion to pass upon any fees in the transaction, either the fees to be paid the bankers or to Guy Myers, or to anyone else. The fees in the transaction were to be paid by the acquiring body, not by the selling company. And it seemed to us that it would just as obviously violate § 2(c) for the commission to tell a state agency or political subdivision what fees to pay or not to pay in conducting its business as to tell such agencies what purchase price was proper.

The commission feels that under the Holding Company Act it is not permitted to do either of these things.

(4) The commission likewise did not pass upon the methods of financing the acquisition or contractual arrangements between Loup and Nebraska—that is, the Loup District and the Nebraska Power Company—with respect to power supply or financing and debt services, nor did it pass upon the provisions for retirement of the public-held securities in Nebraska or any similar matters which have been the matters of some discussion before this committee.

Again, for the commission to have passed upon those matters would have brought it in direct conflict with the injunctions of § 2(c) against regulation of state or Federal governmental agencies.

(5) The commission had no authority to consider the tax aspects of this whole [situation] and did not consider them except on the single question of whether the sale by American Power & Light Company was subject to the special provisions of supplement R of the Internal Revenue Code.

Of course the tax policy with respect to the income of public utility properties under public ownership or with respect to the interest received on revenue bonds issued by public authority is completely outside the commission's province.

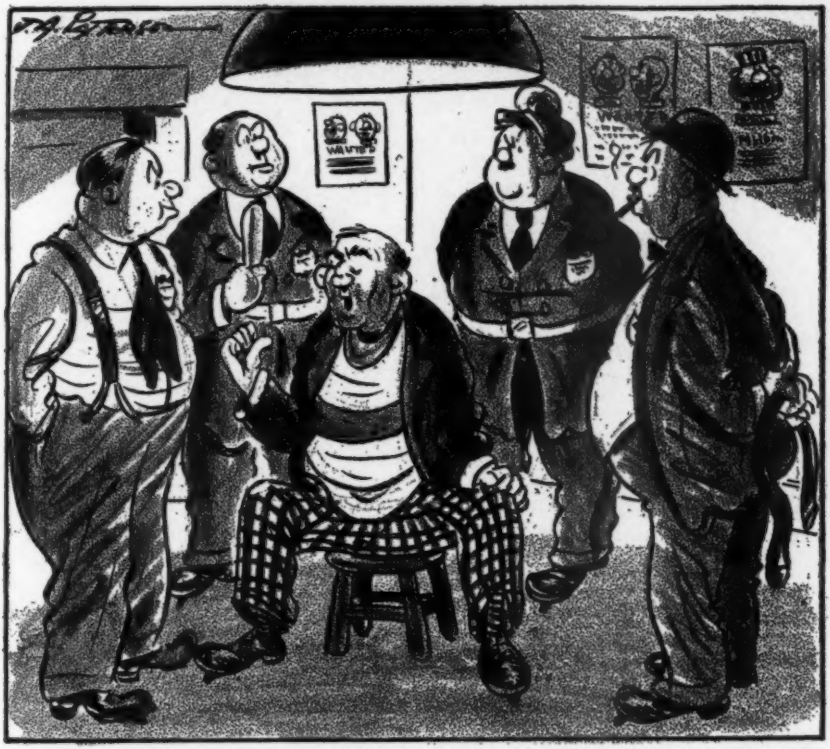
To consider the tax aspects of this particular transaction would have involved not only a violation of § 2(c), but also an entry into a major field of government policy which simply has not been entrusted to the Securities and Exchange Commission for its consideration.

COMMITTEE Chairman Boren, during this hearing, dwelt at considerable length on the tax-exempt revenue bond feature which develops out of such transactions as the Omaha deal. Mr. Cohen explained SEC's position, and in the course of his remarks said:

> . . . The tax differential situation like this is not a question which we have considered to be our direct concern, and we did not consider it a problem arising because of the Holding Company Act, there being so many other manifestations of it having no relation whatsoever to the Holding Company Act.
>
> I would like to give you a couple of examples to illustrate this point: Several days ago the American Power & Light Company, which is the same company that sold the Nebraska stock, received the commission's permission to sell at competitive bidding its holdings of the common stock of the Central Arizona Power & Light Company. In the hearings on this application for leave to make the sale the representative of the Arizona Power Authority, which is a state agency of the state of Arizona, made it clear that it was the intention of the power authority to seek to acquire the electric facilities owned by Central Arizona and that condemnation proceedings had been instituted under state law—and, of course, most or many state laws contain provisions for condemnation of utility property.
>
> Despite this public announcement of the intention to put the properties into public ownership, which was incorporated into the selling prospectus that was issued under the Securities Act, the common stock of Central Arizona was sold to underwriters for distribution to the public at a price more than 15 times last year's earnings. Thus, Central Arizona is no longer a subsidiary of a registered holding company and is not subject any longer to this commission's jurisdiction in any respect. Its net income is now subject to Federal income tax, but one of these days we are told by the power authority that Central Arizona's properties are going to be taken over by the authority or some other state instrumentality, and at that point, if it comes about, one of the consequences will be that the revenues will become tax exempt.
>
> Clearly if that should happen, the withdrawal of the revenue from Federal taxation would be a consequence of two circumstances apart from the Holding Company Act: first, the decision of the state of Arizona to acquire the properties and, second, the Federal tax law which exempts from Federal taxation properties under government operation. The effect of the Holding Company Act has been to take that company simply out of the holding company system, but to leave it entirely in private hands. . . .
>
> The other case I was going to mention was the Puget Sound Case, which has been brought up several times in this record. This company was formerly a member of a holding company system, but several years ago it was reorganized. . . . so that for several years now that company has not been [subject] in any way to the commission's jurisdiction and it is in private hands . . .
>
> As you know, a group of public utility districts in the state of Washington has recently made an offer to purchase the common stock of the company for $18 per share. If such sale is consummated, and I have no idea when or whether it will be, because it is a transaction entirely outside of SEC jurisdiction, we shall again see the phenomenon of once taxable revenue becoming tax exempt.
>
> But again, if that does happen, I think it is clear the phenomenon does not result from the Holding Company Act, since the transaction which took the company out of its former status as a registered holding company subsidiary left it as a privately owned, tax-paying public utility.
>
> Other examples that might be given are the TVA acquisitions, which were based on an entirely different Federal policy, and which took various companies out of the holding company systems and out of the status of being private companies, entirely apart from the incidence of the Holding Company Act, but with the same consequences with respect to taxation.
>
> I might say in passing that the commission's divestment orders under § 11 are never such as to require a sale to a particular purchaser or particular type of purchaser, or even to require a particular type of divestment.
>
> The commission's orders are always in very general terms and they leave it to the company to select, in the first instance, the mode of divestment.

THE discussion then centered upon the question of "competitive bidding," and the record discloses these comments:

> MR. BOREN. Is it not your common practice in the sale of a utility holding company to require competitive bidding?
>
> MR. COHEN. If it is a sale through investment bankers, the commission passes on it to the extent, for instance, of requiring that the investment banker be selected by competitive bidding rather than by negotiation, but the commission does not determine that a particular holding company shall dispose of a particular subsidiary by selling to this fellow or that fellow or to another company, or that it must take the form of a sale. It can take the form of a distribution in liquidation or an exchange offer, or various other



"ARE YOU INFERRING, INSPECTOR MORIARTY, THAT UNLESS I'M MORE FRANK IN OUR LITTLE DISCUSSION YOU WILL RECOMMEND THAT I OCCUPY THE CHAIR OF APPLIED ELECTRICITY IN ONE OF OUR MORE PROMINENT STATE INSTITUTIONS?"

forms, and, in the first instance, the divestment requirement leaves it open to the company to select the appropriate method.

MR. BOREN. It would appear that if an investment banker was the direct purchaser, you require competitive bidding; if the investment banker is the purchaser only to the extent of acquiring the total revenue bonds of some concern, you do not require competitive bidding?

MR. COHEN. If he is an investment banker buying the bonds of a public agency, we just don't have that jurisdiction.

COMMISSIONER PURCELL. I might point out that that results from specific exceptions in the statute that we administer with respect to jurisdiction over public bodies.

MR. BOREN. I think this committee could well consider whether or not that exception is in the public interest.

COMMISSIONER PURCELL. I don't question that at all.

MR. BOREN. In view of what we see in the Omaha transaction and in the Puget Sound Power & Light transaction, the investment banker will be the direct purchaser and he is not required to purchase under competitive bidding, as he is, in an indirect sense, the purchaser, in that he is acquiring the total assets of the company in the form of revenue bonds. It appears there is a point there the committee might well consider as to the advisability of placing jurisdiction in the SEC to pass on that type of transaction so far as the investment banker is concerned.

Toward the close of the consideration of the Omaha situation, in response to the query of Committee Member O'Hara —"Do you consider this Omaha body (Omaha Electric Committee) an instrumentality or public body, or not a public

body?"—SEC Chairman Purcell said:

> . . . So far as the commission is concerned, and I think my recollection is correct, we did not reach the question—apart from what we might have decided had we reached it—as to whether the Omaha Electric Committee was or was not an instrumentality, a public body, an agent, or anything else. We looked at the transaction in the light of the statute, and we saw it as a transaction involving essentially and inevitably the transfer of property from a holding company to a public body and on that basis we advised counsel that it would not be necessary for them to apply for permission or approval of that transaction.

COMMITTEE Chairman Boren, all through this session of the hearings, had directed attention to the various complicated phases of the Omaha transaction, with the lack of surveillance entailed in SEC's declaration of no jurisdiction in such matters. Following the testimony submitted on this particular question, he thus summed up his views as follows:

> . . . . I want to make it clear again that the line of inquiry we are following this morning is not at all directed to the question of whether a public body should or should not be divorced of its property; whether it should go into public or private hands. We are not concerned in that in this investigation, but we are concerned with the question of whether or not the sort of things that seem to have been going on here should go on in the future. If the Omaha committee was the purchasing agent, and it was not in the correct sense a public body, then we feel —and of course this is contrary to your decision—that the question of fees and all the other matters should have been passed on by the commission. Of course, it all hinges on the question whether or not the real purchaser or beneficial owner was the committee.

Testimony on the question of tax losses incurred through acquisition of utilities diverted from holding company control was presented to the committee by Paul Grady, a partner in Price Waterhouse & Company, a national firm of certified public accountants, who stated:

> At the request of the National Association of Electric Companies, I have read the testimony of W. F. Sherwood, assistant commissioner of the Bureau of Internal Revenue, presented at the hearing of this subcommittee on October 22, 1945. At that hearing the chairman of the subcommittee indicated a particular interest in the approximate amount of Federal taxes lost to the U. S. Treasury Department because of divestment of electric utilities from private enterprise to government ownership since the enactment of the Public Utility Holding Company Act. The loss in Federal taxes, of course, consists of two major elements: first, loss in corporation taxes; and, second, loss in income taxes from security holders attributable to interest and dividend income. . . . The estimated Federal corporation taxes lost through divestment of electric utilities from private enterprise to government ownership during the period since the enactment of the Holding Company Act is . . . $9,000,000. The total estimated dividends and interest reductions due to divestments . . . amounts to $72,000,000. The estimated income tax rate on interest and dividends for the year 1943, as computed from Mr. Sherwood's testimony, was 32 per cent. The application of this rate to the estimated interest and dividend reductions of $11,000,000 gives an estimated income tax loss for that one year of approximately $3,500,000.
>
> These estimated corporation taxes lost to the United States Treasury, through divestment of electric utilities and transfer to government ownership, increase from $1,000 in 1937 to over $12,000,000 in 1945 and aggregate $49,000,000 for the entire period.

Then, as to combined tax losses for the period, Mr. Grady made this observation:

> The probabilities would seem to indicate that . . . computations might show an estimated loss in income taxes on interest and dividends for the entire period from 1937 to 1945 of from $15,000,000 to $20,000,000. If these amounts are added to the estimated losses in corporation Federal taxes . . . of $49,000,000, the total losses in revenue to the United States Treasury during the period as a result of divestment of electric properties from registered holding companies and the transfer to government or coöperative ownership would probably aggregate between $65,000,000 and $70,000,000.

THESE figures attracted the attention of Chairman Boren, and the following extract from the record indicates a certain line of thought which was developed at these hearings:

> MR. BOREN. . . . $70,000,000, then, would pay the service charges of how much of the government's debt?
>
> MR. GRADY. Mr. Chairman, that $70,000,000 is a cumulative figure from 1937 to date. I think the figure you are driving at would be more significant if you got it on an annual basis at the present time.

MR. BOREN. Then taking that same figure for this one year—

MR. GRADY. The probabilities are that that figure would apply fairly closely for the year 1945. I mean, I should expect no great change between 1943 and 1945 in the effective tax rate. That would give you an estimate for 1945 of about $5,000,000. If that is added to the figure for the corporate taxes shown on Exhibit 1, of $12,000,000 for 1945, it would give an annual total for the year 1945 of somewhere in the neighborhood of $17,000,000.

MR. BOREN. And $17,000,000, figured at 2 per cent—

MR. GRADY. Would be $850,000,000, I believe.

MR. BOREN. That would carry the burden on the national debt of somewhere near a billion dollars on the divested properties in this year we are talking about, and, of course, the divested properties represent a very small part of the whole field, and, as your figures indicate, these divestments are on the increase rapidly from year to year. . . .

MR. GRADY. That is right. Each year, of course, you lose all of the taxes from all of the divestments that have occurred in all the preceding years.

MR. BOREN. So if that thing keeps growing at the same pace, and it cost a $1,000,000,000 in eight years—or this figure we are talking about—

MR. GRADY. The limit is set only by the total taxes paid by the whole industry.

MR. BOREN. Assuming that all the electric utility industry was liquidated. . . . And if we extend that practice to elevators, creameries, dairy lands, and so forth, if we could add those figures that are represented by that type of industry going into liquidation in this manner, we might get a national picture that we could present to the public as to what could be done with the national debt which, in turn, might wake them up to the fact that the burden of that national debt and its servicing rests on the shoulders of the people who have to make up that tax loss.

MR. GRADY. I think it would certainly indicate the major significance of the problem.

MR. BOREN. And, as an accountant, when you have such problems for a private company, or the government, or anybody else—considering the government as though it were a private organization for the moment, and has to be financed on that basis—I have, as an illustration, as showing the point I have in mind, a table that I can envision, such as the one you show here for one of these companies. That table would indicate the revenues of the government, would indicate the outstanding indebtedness, interest, and so forth. Having that sort of table in mind, and thinking of the government in that form, you can think in terms of the operating revenues of the government being the total collection of taxes, as against its expenditures for servicing its debt, and liquidating its debt. So that if we take these losses as represented by these divestments in an indicated year, assuming that those losses cannot be sustained and still maintain the ordinary operation of the government, and still maintain your fixed service charges, and so forth, then it would become necessary for the government, or a private corporation similarly circumstanced, to seek a new source of revenue to make up the deficit; and the new source of revenue in this case would, of necessity, be an additional burden on the tax-paying public that is not represented in this divestment of utilities program. Isn't that so?

MR. GRADY. Yes, I think that is right.

MR. BOREN. Assuming that it is desirable, the point of my thought a while ago is that it creates in this period of transition, whether it be ten years or a hundred years, a gross inequality as between tax equality for the entire country.

MR. GRADY. That is correct.

MR. BOREN. In other words, in my colleague's state, Arizona, if they had throughout the state of Arizona public ownership, and throughout Oklahoma we had private ownership, then so far as the government is concerned there would be no equality of taxation between us.

The hearings of this committee are scheduled to be resumed this month.

—R. S. C.

¶ "EXCESSIVE *taxes at any point of the economy lead to unemployment and economic disruption that fall on everybody. Excessive expenditures are eventually paid for, under an unbalanced budget, in an inflation that falls with equal force upon poor and rich alike. Inflation is the equivalent of a flat income tax on everybody, without exemptions. It is also the equivalent of a flat capital levy on savings accounts and insurance policies, without exemptions.*"

—EDITORIAL STATEMENT,
The New York Times.

The March of Events

Grants Utility's Petition

THE Securities and Exchange Commission on December 19th granted the joint proposal of the Central States Power & Light Corporation; its parent, the Central States Utilities Corporation; and the Ogden Corporation to extend the maturity date of the former's $5,940,000 of outstanding debentures for one year, from January 1st.

At the same time the commission declined to pass upon the proposal of Central Power, now in process of liquidation, to make an immediate payment of 30 per cent out of present assets, aggregating $1,951,000, on the $831,960 of its 5 per cent debentures held by the public. The remainder of the debentures are owned by the Ogden Corporation.

The authorized proposal provides that the interest payable after January 1st on the publicly held debentures is to be placed in escrow pending determination of the persons entitled to receive such interest, and for the conditional waiver by the Ogden Corporation of interest pending determination of its right to receive payment of interest on and principal of the debentures that it holds.

File Revised Plan

AN amended plan for the recapitalization of Scranton-Spring Brook Water Service Co. and the liquidation of its parent, Pennsylvania Water Service Company, was filed last month with the Securities and Exchange Commission by the two companies and Pennsylvania's parent, Federal Water & Gas Corporation.

In general, the amended plan proposed the redemption of Scranton's long-term debt, the elimination of a special loan from Federal and of Scranton's present preferred and common stocks, the issuance by Scranton of new bonds, preferred and common stock, and a bank loan, and the elimination of Pennsylvania.

There was only one major change between the original recapitalization program and the amended plan, which the commission set down for a hearing on January 10th before Trial Examiner Allen MacCullen. Under the new plan Federal would offer to purchase during a designated 15-day period all 689,138 shares instead of only 200,000 shares of new common stock allocated to the publicly held preferred stockholders of Scranton and Pennsylvania at $13.685 a share.

SEC Advises Court

IN line with a court suggestion, the Securities and Exchange Commission on December 26th filed with Federal District Judge Paul Leahy in Wilmington, Delaware, a proposed decree for the court's guidance in connection with the plan of recapitalization of the Standard Gas & Electric Company.

Getting in just within the court-allotted time limit, the commission urged Judge Leahy to order Standard Gas to call for redemption within thirty days of his decree all of its outstanding notes and debentures and to file such applications with the SEC.

If the company calls its notes and debentures, the court's ruling, according to the SEC, should remand the plan of recapitalization to the commission so the latter may hold hearings and determine whether any modification should be made in provisions respecting the treatment of the various classes of stock. If the company does not call its notes and debentures, the court's decree, the SEC said, should enforce the plan, as approved by the commission, in a manner consistent with the mandate of the circuit court of appeals in Philadelphia.

The SEC also proposed that Judge Leahy's decision deny other portions of Standard Gas' motion, as well as the motion filed by C. A. Johnson and others.

Anticipating the SEC's action, Standard Gas earlier in the day had filed with the SEC a proposal to borrow $51,000,000 from 11 banks and to use the proceeds and other funds to redeem $58,601,000 of notes and debentures "at the earliest feasible date" at their aggregate call price of $59,592,962. The promissory notes issued to the banks would bear interest, payable quarterly, at the rate of 2½ per cent per annum.

FEPC Ordered to Sift Bias

PRESIDENT Truman directed the Fair Employment Practices Committee last month to investigate the extent of race or creed discrimination against displaced war workers seeking jobs in reconverting peacetime industries, following a discussion of the subject with committee members at the White House.

Widespread violation of the government's expressed policy against discrimination was reported to the President by the chairman, Malcolm Ross, both in reconverting industries

and in the Federal establishments. President Truman expressed himself as sympathetic and would see what could be done about any such abuses in the cut-back and hiring policies within the government departments.

Meanwhile, Mr. Ross said, in a prepared statement, that "after five years of experience, the committee concludes that the cure for the long-standing evils of inequality in industrial opportunity lies solely within the hands of Congress."

The FEPC chairman declared that the refusal of Congress to appropriate adequate funds to the committee and to make permanent its status by legislation "makes impossible FEPC operations on a scale to meet the problems of minority group workers during reconversion."

Colorado

Huge Program Planned

As the opening gun of a long-range campaign to keep abreast and ahead of Denver's postwar development, expenditure of $3,075,000 in 1946 for new construction and improvements to existing facilities throughout the area served by the Public Service Company of Colorado was announced last month by John E. Loiseau, president. The announcement followed action by directors and other officials of the company.

The officials expressed confidence that the substantial growth in population and industry made in the region during the war period not only would be maintained, but would reach even greater proportions in peacetime.

The company plans to have its construction work completed and ready for use so that all needs, both residential and industrial, can be taken care of as the demands arise.

One fact disclosed in the preparation of this estimate of construction expenditures was that the anticipated reduction in sales of gas and electricity expected from the sudden cancellation of government war contracts had failed to materialize. This was said to be an indication that the area experienced little difficulty in converting from war to peacetime production.

Rate Hearing Set

Rates charged by the Citizens Utilities Company, which sells natural gas to customers in southeastern Colorado, will come up for a hearing before the state public utilities commission in Denver on January 18th. The firm serves customers in La Junta, Swink, Rocky Ford, Las Animas, Ordway, Manzanola, Fort Lyon, and Fowler.

In announcing the hearing, commissioners said the case was an aftermath of a rate reduction ordered against the Colorado Interstate Gas Company by the Federal Power Commission. Colorado Interstate sells gas to Citizens Utilities, and has deposited $175,000 with the Federal Circuit Court of Appeals, representing the difference in rates it charged Citizens Utilities and those set by the FPC.

The hearing, commissioners said, would determine whether there is to be a refund to consumers of Citizens Utilities and to define the company policy on depreciation and maintenance of equipment.

Kansas

REA Allotment Made

Allocation of $481,700 to two Kansas electric coöperatives for new lines and service to members' homes was recently announced by the Rural Electrification Administration. The allocations were:

Kaw Valley Electric Coöperative, Topeka, $290,000, and the Doniphan Electric Coöperative Association, Troy, $191,700.

A. J. Bassett, manager of the Kaw Valley Electric Coöperative of Topeka, said the allocation would provide for 235 miles of lines in 6 counties—Shawnee, Osage, Douglas, Waubaunsee, Pottawatomie, and Jackson. He expects the lines to furnish electricity to about 500 people.

Another source reported that about 35 miles of electric lines would be strung in Shawnee county.

Louisiana

Electric Rates Reduced

The Gulf States Utilities Company recently filed reduced gas and electric rate schedules with the state public service commission, effective January 1st, which will result in a savings of $242,000 a year for its customers, the commission announced.

J. B. Hodge, sales manager at Baton Rouge, said that the cut in rates affected all towns

and cities in Texas as well, which were served by the Gulf States system. He added that his company served 161 cities in Louisiana and 164 in Texas. The rates are the same throughout the system in both states.

The new schedules were accepted by the commission "without prejudice to its forthcoming investigation of electric and gas rates throughout the state," C. W. Coleman, acting secretary of the commission, said.

The new rate schedule, applicable to all residential users served by the company, will have a top rate of 4½ cents per kilowatt hour, this being 1 cent less than the old top rate.

Michigan

Prepared to Make Refunds

THE Detroit Edison Company was recently reported preparing to refund $16,450,000 to electric, gas, and steam customers and to reduce electric rates $3,000,000 annually. The refund is to be made as a result of a state public service commission order, affirmed by the circuit court in October, that the company return this amount to customers in lieu of paying Federal excess profits taxes for the past two years.

The refund comprises $10,450,000 impounded from 1944 revenues and $6,000,000 set aside in 1945. It had been approved by the state commission and testimony was considered by Judge Archie D. McDonald of the Ingham County Circuit Court on December 31st.

The first of more than 1,000,000 refund checks were expected to be ready this month.

The proposed rate reductions, the forty-first the company has effected since 1918, were to go into effect January 1st. They will amount to $1,134,000 annually in residence and farm rates, slightly more than $1,000,000 in commercial rates, and the rest in industrial rates.

Court action to block rebate and rate cut orders was taken by the city of Detroit on December 20th in the Detroit Edison and Michigan Consolidated Gas Company cases. Corporation Counsel Dowling and James H. Lee, his assistant in the utility field, assailed the $16,450,000 Detroit Edison rebate on grounds that it appeared to them that the rebate should amount to $4,450,000 more. They also criticized the proposed Edison rate cut as too low.

At the same time they questioned the method by which a $11,200,000 rebate is to be made by the gas company and insisted that reductions in gas bills should be greater than those ordered by the state commission.

The state commission recently entered an order declaring that the impounded fund involved in Texas natural gas litigation, as it relates to Michigan, should belong to the "ultimate consumers as beneficial owners" rather than to distributing companies such as Michigan Consolidated or Consumers Power.

Mississippi

Rejects Proposed Utility

THE mayor and board of councilmen of Biloxi, in reply to a petition submitted by the Biloxi port commission, requesting issuance of $300,000 worth of revenue-bearing bonds to erect a refrigeration utility, recently informed the port commission that it feels it would not be to the best interests of the city to issue the bonds.

In taking this action the city commission set out that there was no showing that there is available a lessee financially able and willing to lease the utility at any amount sufficient to retire the bonds and interest on the proposed issue. The city commission also stated a proposed 10 per cent bond or brokerage fee, which it was proposed to pay, was excessive. The issuance of these bonds would bring the total issued by the port commission to within $7,000 of the limit of bonds it could issue and would preclude the commission from any other constructive work in behalf of the port of Biloxi, the city commission further pointed out.

Missouri

Depreciation Fund Hearing

A HEARING designed to clarify practices and orders of the Missouri Public Service Commission concerning depreciation allowances to public utility companies, and to determine the extent to which earnings on depreciation reserves shall be deducted from operating expenses of the companies, opened in Jefferson City on December 17th.

The case, affecting more than a hundred companies, involves interpretation of a provision of the Public Service Commission Law, not enforced since enactment of the regulatory law in 1913, that income derived by a public utility for investment of depreciation reserve funds shall be credited to such funds.

The commission in August, 1944, issued a general order requiring gas, electric, water, telephone, telegraph, and heating utilities to credit such income to their depreciation reserve funds and to make equivalent deductions from the amounts set aside annually—as a part of operating expenses—or depreciation. Enforcement of the order has been held up pending hearings.

Rate Cuts Proposed

THE city of Kansas City recently notified the state public service commission of its proposal that utilities there cut rates in 1946 when income taxes are lower. The city contended that Kansas Power & Light Company would save about $750,000 in Federal taxes, and Southwestern Bell Telephone Company $500,000, or $750,000. Thus there would be well over $1,000,000 added to operating profit, less any increased outlays for wages or material costs.

The city intends to press for a rate reduction on the basis that otherwise the utilities will retain the bulk of tax savings.

Nebraska

Nebraska Power Has Earned Surplus

T. H. MAENNER, president of the Omaha Electric Committee, Inc., recently announced that Nebraska Power Company would end its first year of operation under the committee with a net to earned surplus of about $661,000. Common stock of the company was purchased from American Power & Light Company by the committee, a nonprofit corporation, for $14,467,012 on December 26, 1944.

"This purchase by our group a year ago will make possible a transfer of the Nebraska Power properties to the Omaha Public Power District for $2,158,000 less than if the purchase were to be consummated today," he said.

An effort by the company to refinance $7,452,000 of its preferred stock, approved by the Nebraska State Railway Commission, has been held up pending a decision by the Federal Power Commission, Mr. Maenner said. Negotiations were said to be in progress between the committee and the power district for the transfer.

The sale of the property to the committee has precipitated many changes in the Omaha power situation during the past year, according to Mr. Maenner. The 1945 session of the Nebraska legislature repealed all power laws pertaining to Omaha and provided the machinery for the creation of the power district. With the assistance of the committee, the power district was set up and members appointed by Governor Dwight Griswold.

Listed among the achievements of the company during the year are a salary increase to all except administrative employees, adoption of a pension plan, and improvements on the plant and facilities amounting to more than $500,000.

New Jersey

Electric Workers Get Rise

A COMPROMISE offer of 12½ per cent wage increase and improved working conditions on December 20th ended a threat to strike by 3,500 electrical employees of the Public Service Electric & Gas Company, which would have left 80 per cent of the state without electric power.

Eight of the 11 locals of the International Brotherhood of Electrical Workers, an affiliate of the American Federation of Labor, voted to accept the company's proposal for a new contract, and the 3 remaining locals subsequently followed suit.

The union had demanded a 30 per cent increase.

The negotiations broke down and a strike vote was held November 20th when the union said it would accept 15 per cent and the company refused to go higher than 10 per cent.

Improved working conditions in the new contract, which will be retroactive to last May, include pay for overtime meals; 12 paid holidays instead of 11; a higher rate of pay for long-term employees who cannot perform regular duties because of disabilities; longer vacations for long-service employees; and longer sick leave.

Cut in Rates Offered

THE Jersey Central Power & Light Company has agreed to reduce its electric rates by $1,000,000 a year, effective not later than February 1st, it was announced recently by the state public utilities commission. The company serves 125,000 residential customers, 10,000 commercial, and 28,000 seasonal users in parts of Essex, Morris, Passaic, and Middlesex

counties and all of Monmouth and Ocean counties. New rates to accomplish the reduction had not been submitted to the commission at the time of the announcement.

The company agreed to obtain a cash contribution of $5,000,000 from its parent body, NY PA NJ Utilities Company, to be used for improvement of its capital structure. It plans to reduce outstanding preferred stocks from a present par value of $21,861,500 to approximately $12,000,000 "which will result in substantially reducing fixed charges."

New York

Rate Cut Approved

REDUCTIONS of about $203,000 annually in electric rates of Central Hudson Gas & Electric Corporation were approved last month by the state public service commission. The rate cuts, affecting some 77,000 customers in Beacon, Kingston, Newburgh, Poughkeepsie, and other communities in the Hudson valley, were initiated by the company.

The utility's application showed that urban residential consumers would benefit to the extent of an estimated $52,000 annually. Rural customers will receive a reduction of about $49,000, while commercial and industrial users will save about $102,000 a year, it was said.

The principal reduction is in the minimum charge, which will be cut from $1 to 75 cents a month in urban areas and from $1 to 95 cents in rural territory. In urban areas, however, the amount of electricity covered by the minimum charge is to be reduced from 12 to 10 kilowatt hours.

Fare Rise Demanded

A DEMAND for a higher fare that will cover deficits and provide for repairs, replacements, and improvements to all New York city-operated subway, trolley, bus, and elevated lines was made by the Commerce and Industry Association last month in a report sent to Major General Charles Gross, chairman of the board of transportation.

Pointing out that deficits of the city's transit system had been increasing steadily and would exceed $52,000,000 for the year ending June 30th, the association declared that "the immediate problem is the safety of the existing lines, their rehabilitation, and the elimination of increasingly large annual deficits." While operating costs rise, revenues based upon the 5-cent fare will decline because the increased use of automobiles and the cessation of war plant operations in the metropolitan area will mean fewer passengers than have been carried in the last three years, the organization held.

A table accompanying the report showed that the city's transit deficits, after operating expenses, interest on debt, and redemption of debt, rose from $29,161,489 in 1941 to $42,734,595 in 1945, while gross revenue rose from $115,174,823 to $125,668,373, and total costs from $114,336,312 to $168,402,968.

The imposition of an additional one-cent city sales tax for the next two or three years, with the proceeds earmarked to help meet the cost of rehabilitating the city's unified transit lines, was recommended on December 20th by Park Commissioner Robert Moses in his capacity as prospective coördinator and expediter of public works for Mayor-elect William O'Dwyer.

Mr. Moses made his recommendation at a public hearing held by the finance committee of the city council on the 1946 capital budget. The proposal to double the present sales tax was made during a discussion of Mr. Moses' outline of a public and semipublic works program for the next three years, to cost $1,423,300,000, of which sum about $1,150,000,000 is available or "in sight."

Pointing out that the city's transit lines were in sore need of rehabilitation, Mr. Moses belittled the possibility that a higher fare would be favored as the method of supplying funds.

"There's no point in going into the question of a higher fare," he said. "Nobody can afford to favor a higher fare except those who don't have to vote on it and risk their political necks. I'd say the easiest way would be to put the extra cent back on the sales tax and earmark the money for transit for two or three years; then the board of transportation would know where its money was coming from."

Commissioner Moses suggested that the board of transportation's estimate of $102,000,000 for the cost of modernizing power plants could be cut by $80,000,000 if a minimum of rehabilitation work was done on the plants and the rest of the power needed was purchased from the Consolidated Edison Company.

Oregon

PUD Resists Suit

PUD attorneys last month filed in superior court a demurrer to a suit brought by four property owners seeking to prevent Clark County Public Utility District from taking over local properties of the Portland General Electric Company.

The demurrer, prepared by D. Elwood Caples, attorney for the PUD, stated that the court had no jurisdiction of the persons, of the defendants, or of the subject matter of the action, that the plaintiffs had no legal right to sue, and that the complaint did not state facts sufficient to constitute a cause of action.

The four plaintiffs asked the court to stop the issuance of $1,000,000 in bonds for the property's acquisition. They based their suit in part on the allegation that sale of the bonds to a Des Moines firm at a discount without advertising for bids was contrary to law.

The suit and subsequent demurrer followed steps taken by the PUD to start operation of Clark county PGE properties on and after January 1, 1946. A Federal court jury had fixed the value of the property at $801,000,000.

Texas

Flared Gas Lacks Outlet

BEAUFORD H. JESTER, state railroad commissioner, last month made public an engineering committee's survey of 177 Texas gas fields which disclosed: (1) More casinghead gas is being produced than can be marketed at present; (2) more gas is being produced than efficient production of oil requires; (3) waste of casinghead gas also causes underground waste of oil; (4) excessive gas-oil ratios and incorrect reporting have caused gas waste; (5) some gas is used unnecessarily on gas lift oil wells.

The industry survey committee, organized last year and headed by William Murray of Houston, computed casinghead gas production at 2,486,000,000 cubic feet daily, 57.03 per cent of it flared for lack of useful outlet.

The analysis pointed to conservation of gas as the industry's primary future concern but noted that gas conservation cannot be obtained overnight without disrupting oil production.

The committee recommended immediate reductions in gas-oil ratios, lowering permissible limits of gas for oil lift purposes, gas-oil ratio regulations, shutdown of wells completed in a gas cap unless gas is reinjected, general return of casinghead to producing reservoirs, better control over the production of water from oil fields, restricting all of casinghead until a field's conservation requirements have been met, and prohibition of flaring except upon special permission.

The analysis disclosed that flaring is greatest on the Gulf coast and in west Texas. Gulf coast fields were found to produce 569,000,000 cubic feet of casinghead gas daily.

Utah

Cites Status of Funds

PROVO city would be able to operate without a property tax levy if electricity rates were increased 40 per cent and culinary water rates 50 per cent, Mayor-elect Mark Anderson declared recently.

Mr. Anderson, who was instrumental in securing the municipal power plant for Provo and who has served on the utilities board for several years, made the statement in answer to continued demands that the utilities department divert utility reserves into Provo city's general fund in lieu of taxes.

Provo's utility rates are among the lowest in the intermountain West, having been reduced twice, or a total of 18 per cent, since the power plant began operation in 1941.

Washington

Court Approves Plan

APPROVAL for the reorganization plan to simplify and recapitalize the corporate structure of the Spokane Gas & Fuel Company was granted in Federal District Court on December 18th by Federal Judge Lloyd L. Black of Seattle. The Federal court will have jurisdiction over the plan until terms of the agreement are carried out.

The plan was presented for the court's approval by Donald J. Stocking of the SEC office in Seattle, who included testimony heard by the commission and its findings of fact to show the commission's approval of the plan as fair, equitable, and feasible to all parties.

After the gas company meets the requirements of the plan and the directions of the court, the company will then ask to be discharged from supervision of the court, upon showing the court the plan of reorganization has been complied with.

Spokane Gas & Fuel Company is a subsidiary of the Cities Service Power & Light Company.

The plan of recapitalization will effectuate provisions of the Public Utility Holding Company Act of 1935.

The Latest Utility Rulings

Appellate Court Reverses Ruling against Injunction in Rate Case

THE New York Supreme Court, appellate division, third department, has reversed orders and a judgment of the supreme court, special term, in Staten Island Edison Corporation *v.* Maltbie et al. 60 PUR(NS) 362, 57 NY Supp2d 515, and granted a temporary injunction on condition that the utility company file an appropriate bond to protect all persons in event that the relief sought in the action should be ultimately denied. Judge Heffernan wrote an opinion in which Judge Lawrence concurred, while Judge Hill concurred in a separate opinion. Judges Brewster and Foster dissented.

The lower court had held that a public utility company which has been ordered by the commission to reduce rates is not deprived of constitutional rights by reason of a statutory requirement that it seek a review of the order by certiorari under Art 78 of the Civil Practice Act instead of suing in equity to restrain enforcement on the ground of confiscation. It held that a complaint by such a company, in an equity suit for injunction, should be dismissed on the ground that an adequate remedy at law exists by way of certiorari, under which neither the state nor Federal constitutional guaranty of due process is denied.

The rate controversy had previously been before the court when the company had instituted an action in equity to restrain enforcement of an order prescribing temporary rates. A judgment dismissing the complaint for failing to state a cause of action and for want of jurisdiction had been sustained in 267 App Div 72, 52 PUR(NS) 166, 45 NY Supp2d 337, and the court of appeals had upheld this dismissal in 292 NY 611, 55 NE2d 376.

Judge Heffernan said that the court did not base its decision in that case on the ground that certiorari was the exclusive remedy and that a suit in equity would not lie, but that the judgment was placed solely on the ground that no question of confiscation could arise in a case involving only temporary rates, because of the recoupment provisions of the temporary rate statute. The commission has now prescribed final rates.

Judge Heffernan declared that in rate regulation the commission acts in a legislative capacity. He said that a review in certiorari would not give the company adequate relief. In such a proceeding the court could not substitute its judgment upon the facts for that of the commission.

He continued:

> We are convinced that a utility may maintain an action in equity in this state for relief against confiscation resulting from an order of defendants. It is not enough to bar equitable relief that a doubtful remedy at law exists. . . . Where constitutional rights of property are involved a litigant should not be turned out of the supreme court with the curt admonition that he must submit his grievance to the mercy of administrative officials. Neither should the court confess its inability to comprehend and intelligently decide the issues involved where confiscation is alleged.

Judge Hill, in his concurring opinion, reviewed Supreme Court rulings on judicial interference with commission action, in discussing a contention by the commission that the decision in Ohio Valley Water Co. *v.* Ben Avon, 253 US 287, PUR1920E 814, sustaining such an injunction, had been repudiated. He concluded with the statement:

> Until the Supreme Court of the United States more definitely disavows the long

line of precedents, the law on the subject should be regarded as settled. Under Art 78, CPA, our courts do not exercise independent judgment as to law and facts.

The dissenting judges upheld the principle that a commission decision is entitled to the same effect as an act of the legislature and that it may not be invalidated if there are reasonable grounds to support it. Judge Foster declared that certiorari permits an independent review as to the only factual question a court may be concerned with when a legislative decision, arrived at in a quasi judicial manner, is challenged as being unconstitutional. He ventured to say that equity could do no more. He said he knew of no infallible standard of accuracy as to values, a breach of which impairs constitutional rights, which a court of equity possessed. *Staten Island Edison Corp. v. Maltbie et al.*

Power Transmission over Customer's Line into Adjoining Territory

A PETITION of Pennsylvania Electric Company for leave to intervene in a proceeding based on a complaint against refusal of service by West Penn Power Company was dismissed by the Pennsylvania commission on the ground that Pennsylvania Electric had no material interest in the controversy. West Penn Power was willing to serve two mines of the complainant located in its charter territory but refused to serve a mine which was within the charter territory of Pennsylvania Electric.

The complainant proposed to take service within the charter territory of West Penn Power and to transmit it over its privately owned lines and rights of way.

The utility commission declared:

It is well-settled law that an electric utility may deliver electric energy at a point in its charter territory for transmission by the patron for use outside that charter territory where the transmission from the point of delivery to the point of use is carried out over the patron's privately owned line. Kulp *v.* Public Service Commission (1923) 82 Pa SuperCt 83, 88; Stockertown Light, Heat & P. Co. *v.* Pennsylvania Edison Co. 7 Pa PSC 377, PUR1926B 201; Schuylkill Haven *v.* Pennsylvania Power & Light Co. (1934) 12 Pa PSC 567, 569, 3 PUR(NS) 127. Pennsylvania Electric Company therefore has no material interest under the undisputed facts, and its petition to intervene must be dismissed.

Northwestern Mining & Exch. Co. v. West Penn Power Co. (Complaint Docket No. 14110).

Excessive Return Not Justified by Proposed Reinvestment in Plant

THE Wisconsin commission, although authorizing a revision of telephone rates, stated that it is unwilling to grant rates that result in an unreasonably excessive return even though it has been assured that the surplus funds would be reinvested in telephone plant. The rates as authorized would produce a return of 6.3 per cent.

An increase in the cost of telephone service of $6 a year to residence subscribers and $12 a year to business subscribers was contemplated.

The state public service commission said that the greater proportionate increase to business subscribers was to correct what might have been a discriminatory situation under existing rates and under which business and residence subscribers were rendered service at the same rate. *Re Viking Telephone Co. (2-U-2060).*

State Rule on Rate Base Not Changed by Supreme Court Decision

THE superior court of Pennsylvania reversed and remanded commission orders reducing natural gas rates, and directed the commission to redetermine the company's rate base in accordance with the court's opinion. Appeals from the orders were predicated upon three premises; namely, that the finding of fair value was not supported by the evidence, that the allowed earnings were excessive, and that the existing rates were unreasonable.

At the outset, the court upheld an appellant municipality's right to appeal because it had been a consumer-complainant in the rate case, had an interest in the subject matter, and was affected by the rate order; but it quashed the appeal of a small consumer who had not been a party to the proceedings.

It was held that the commission, in determining what a public utility company may charge its customers, must accept fair value of property used and useful as the rate base. It was deemed unimportant that rates of another gas company in the same area were lower than those approved by the commission for the appellee company.

The city sought to have the court apply methods of measuring value adopted by other courts, reflecting a social viewpoint rather than an unbiased balancing of interests of investors and consumers. It stressed the United States Supreme Court's decision in the Hope Natural Gas Case. But concerning that decision the state court said:

> It should be enough to say that the decision was concerned with a construction of the Federal Natural Gas Act of June 21, 1938, 52 Stat 821, 15 USCA §§ 717-717W, which directed the Federal Power Commission to fix "just and reasonable" rates without specifying standards for determining them. Any construction of that act of Congress has no application to the language of our Public Utility Law or its binding effect upon us. We have adhered to the view that when the legislature wrote *fair value* into the Public Utility Law it adopted the then settled construction of the appellate courts of this state and intended the same meaning of *fair value* as under the prior Public Service Act. Statutory Construction Act of May 28, 1937, PL 1019, 46 PS 552. Decisions of the Supreme Court of the United States, in other cases, accepting standards other than *fair value* in the sense of our statute, do not change the present law of this commonwealth; that remains a question for the legislature, so long as our views are unmodified by a court of higher authority.

On an earlier appeal in the same case, the court had held that the commission had improperly refused to consider expensed items as additions to property affecting the rate base. In the present case the court reconsidered the question and became convinced that the commission had been right and that it had been wrong. The court said:

> But it is our reconsidered conclusion that where, as here, a part of the earnings, according to the books of the company, were disbursed as operating expense, the company, having recouped the entire cost from the ratepayers, over and above adequate profits paid to security holders, and having enjoyed the benefits of treating the cost as operating expense, cannot later be permitted to say that these expenditures are capital investment on which consumers must pay an additional return.

While there was no complaint as to the commission finding of depreciated original cost, except as to the inclusion of the expensed items, the court ruled that the rate base could not be determined solely from a finding of such cost where there had been changes in price levels and no adjustments had been made to effect price trends disclosing fair value as of the applicable date. The court said that the commission should have appraised the probative force of testimony of reproduction cost, notwithstanding the difficulties inherent in appraising such testimony.

The court could not say that a return of 6½ per cent was unreasonably high as applying to a public utility whose sole product was natural gas. *Pittsburgh v. Pennsylvania Public Utility Commission (Nos. 93, 94).*

Preference for Service from Coöperative Bars Approval of Electric Extension

An application of the Northern States Power Company for authority to extend a rural line to serve sixteen customers was denied by the Wisconsin commission upon a showing that twelve of the original applicants had signed a petition stating that they desired service from the Trempealeau Electric Coöperative and requesting that the application of the company be denied. They were all members of the coöperative. Only four persons remained who had not indicated that they desired service from the coöperative.

An extension to serve them, said the commission, would be an unwarranted investment for the probable returns and would constitute a burden on the rest of the company's system. The testimony showed that both utilities had the materials and were in position to build the extension under consideration. The commission said:

> It is not within the province of the commission to require a group of farmers to accept service which they do not want. Whether the extensions requested are in the public interest, and are required by public convenience and necessity, is the commission's only concern. The testimony does not reveal that those criteria are present here.

Re Northern States Power Co. (CA-2252).

Hearing Required When Applications for Authority Are Mutually Exclusive

An applicant for a construction permit under the Federal Communications Act is not granted the hearing to which he is entitled where the Federal Communications Commission, having before it two applications which are mutually exclusive, grants one without a hearing and sets the other for hearing. This ruling was made by the Supreme Court in reversing a decision of the court of appeals for the District of Columbia which upheld such procedure by the commission.

The Fetzer Broadcasting Company, in March, 1944, filed an application for authority to construct a new broadcasting station at Grand Rapids, Michigan, to operate on 1,230 kilocycles with 250-watts power, unlimited time. In May, 1944, before this application had been acted upon, the Ashbacker Radio Corporation filed an application for authority to change the operating frequency of its station WKBZ at Muskegon, Michigan, from 1,490 kilocycles with 250-watts power, unlimited time, to 1,230 kilocycles.

The commission, after stating that simultaneous operation on 1,230 kilocycles at these places would result in intolerable interference to both applicants, declared that the two applications were mutually exclusive. The commission granted the Fetzer application without a hearing and designated the Ashbacker application for hearing.

One provision of § 309(a) of the Federal Communications Act authorizes the commission, upon an examination of an application for a station license, to grant it if the commission determines that public interest would be served by the grant.

Another provision of that section says that if, upon examination of such an application, the commission does not reach such a decision, it shall notify the applicant and grant a hearing.

The court did not think it was enough to say that the power of the commission to issue a license on a finding of public interest, convenience, or necessity supported its grant of one of two mutually exclusive applications without a hearing of the other. If the grant of one effectively precludes the other, the statutory

right to a hearing becomes an empty thing.

One of the issues for determination on the hearing would be the extent of interference which would result from simultaneous operation of the station. Since the commission itself had stated that simultaneous operation would result in intolerable interference to both, it was said to be apparent that the Ashbacker Corporation carried a burden which could not be met. Mr. Justice Douglas said:

> To place that burden on it is in effect to make its hearing a rehearing on the grant of the competitor's license rather than a hearing on the merits of its own application. That may satisfy the strict letter of the law but certainly not its spirit or intent.

As the Fetzer application had been granted, the other applicant was in the same position as a newcomer seeking to displace an established broadcaster. It was said that by the grant of the first application the other applicant had been placed under a greater burden than if its hearing had been earlier. Legal theory is one thing, but the practicalities are different. It was observed that it is difficult for a newcomer to make the comparative showing necessary to displace an established licensee. *Ashbacker Radio Corp. v. Federal Communications Commission.*

Other Important Rulings

THE supreme court of Arkansas, in upholding a commission order granting a permit for an extension of motor carrier service, held that a certificate may issue, if public convenience and necessity be shown, even if there is already existing service, provided the commission finds either that the present service is inadequate, or that additional service would benefit the general public, or that the existing carrier has been given an opportunity to furnish additional service as may be required. *Santee v. Brady et al. 189 SW2d 907.*

The Federal Power Commission dismissed a complaint by industrial companies against a group of power companies claiming that rates were unjust, illegal, and discriminatory, where it appeared that the complainants purchased energy for their own use and not for resale, and, consequently, the sale by the utilities did not constitute a sale of electric energy at wholesale within the meaning of that term as used in the Federal Power Act. A complaint by a city was dismissed on the ground that sale of electric energy did not appear to be a sale of electric energy in interstate commerce inasmuch as it did not include any electric energy transmitted from one state and consumed at points outside thereof. *Wedron Silica Co. et al. v. Illinois Iowa Power Co. et al. (Docket No. IT-5688).*

The Federal Power Commission dismissed, for lack of jurisdiction, an application for authority to construct and operate natural gas pipe-line facilities on the ground that the proposed facilities were to become a part of the applicant's existing facilities and to be used for the local distribution of natural gas to ultimate consumers, and, therefore, not subject to the Natural Gas Act. *Re Iroquois Gas Corp. (Docket No. G-653).*

The Wisconsin commission approved a proposed arrangement for unlimited interexchange service where a statement signed by 91 of the company's 102 subscribers approved the proposal and a concurrent increase in rates, but the commission disapproved the proposed rates as unreasonable and substituted rates which would produce a return of approximately 6 per cent on the net value of telephone plant. *Re Union Grove Telephone Co. (2-U-2082).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 61 PUR(NS) NUMBER 2

Points of Special Interest

Titles and Index

TITLES

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Re Northern Natural Gas Company

Docket No. G-533
November 6, 1945

APPLICATION *for authorization for natural gas facilities; granted in part and dismissed in part.*

Certificates of convenience and necessity, § 104 — Natural gas facilities — Gas for electric plant.

1. Temporary authorization previously granted for the construction and operation of facilities for the delivery of natural gas to an electric company solely for operation of pilot burners, ignition purposes, and as emergency standby in case of breakdown of coal-handling and coal-burning equipment at an electric generating plant, was made permanent, p. 65.

Monopoly and competition, § 3 — Gas competition with coal — Natural gas for boiler fuel.

2. Proposed transportation and service of natural gas to an electric company for use at an electric generating plant as boiler fuel was held not to be required by public convenience and necessity where the evidence showed that if the electric utility were permitted to use natural gas only for operation of pilot burners, ignition purposes, and emergency standby, the plant could be operated successfully with coal, p. 65.

By the COMMISSION:

[1, 2] It appears to the Commission that:

(a) On March 24, 1944, Northern Natural Gas Company (applicant) filed an application, subsequently amended, for a certificate of public convenience and necessity under § 7 of the Natural Gas Act, 15 USCA § 717f, as amended, to authorize the construction and operation of the following described facilities for the transportation and sale of additional volumes of natural gas to Iowa Electric Light and Power Company (Iowa Electric) for use as boiler fuel at the latter's Boone, Iowa, electric generating plant:

(1) Approximately 0.7 mile of 4½-inch O. D. natural gas pipe line, together with appurtenances thereto, extending from a point of interconnection with applicant's 10-inch Ames lateral line, said point approximately 1,400 feet west and 730 feet south of the northeast corner of § 4, T. 83 N., R. 26 W., Boone county, Iowa, in a northerly direction to the measuring station situated approximately 865 feet east of the center of § 33, T. 84 N., R. 26 W., Boone county, Iowa.

(2) A measuring station and one 6-inch orifice meter run and one 10 foot x 14 foot building, together with appurtenances thereto, to be located at the terminus of the aforesaid pipe line.

(b) Pursuant to the Commission's orders dated May 11 and May 27,

1944, appropriate notice of which was given, including notice to the regulatory Commissions in the states in which applicant operates, this proceeding was consolidated for purposes of hearing with three other applications filed by applicant in Docket Nos. G-501, G-535 and G-539, and a public hearing was held thereon commenciing June 5, 1944, and continuing through June 8, 1944, in Chicago, Illinois. No state Commission filed a protest to the application or appeared at the hearing.

(c) Several railroads and representatives of coal and labor interests were permitted to intervene and participated in the hearing. Certain of the interveners[1] filed briefs in this matter, contending inter alia that it would be inconsistent with the public interest to permit the use of natural gas as boiler fuel where adequate supplies of coal are available for such use, and opposing the granting of the application. Orally at the hearing, and in writing on June 21, 1944, applicant moved to dismiss the petitions of such interveners to intervene in these proceedings, which petitions had theretofore been granted by the Commission.

(d) On June 15, 1944, the Commission granted applicant temporary authorization to construct and operate the facilities described in paragraph (a) above. The operation of such facilities was thereby limited, however, to the delivery of natural gas to Iowa Electric solely for operation of pilot burners, ignition purposes, and as emergency stand-by in case of breakdown of coal-handling and coal-burning equipment at the latter's Boone electric generating plant. This authorization was granted without prejudice to further Commission action in this proceeding.

(e) Applicant, a Delaware corporation having its principal place of business in Omaha, Nebraska, is engaged, among other operations, in the transportation of natural gas produced in the states of Texas and Kansas, and in the sale of such gas for resale for ultimate public consumption in the states of Kansas, Nebraska, Iowa, Minnesota, and South Dakota by means of its interconnected pipe-line system located in such states. The facilities referred to in paragraph (a) above have been constructed and are integral parts of such system.

(f) Iowa Electric is engaged in the distribution of electricity and gas in several Iowa cities. For several years, Iowa Electric has purchased natural gas from applicant for enriching manufactured gas and for resale as straight natural gas. In its generation of electric energy, Iowa Electric operates several generating plants using coal principally for fuel. One of such plants is located in the city of Boone and has been operated since 1911, using coal exclusively for fuel. In 1944, the installation of a new high-pressure boiler was completed at the Boone plant. Upon the commencement of the operation of the new boiler, it was proposed to discontinue the use of the five old boilers at this plant. The new boiler is designed for the use of coal, oil, or natural gas and any or all of such fuels or any proportion thereof may be used efficiently. Either oil or gas is required for pilot lighting if coal is used

[1] Central Illinois Coal Operators Committee, Coal Trade Association of Indiana, Illinois Coal Traffic Bureau, Iowa Railways Association, National Coal Association, United Mine Workers of America, and Order of Railway Conductors, et al.

as fuel.[3] Although coal has been used satisfactorily during the existence of the Boone plant and abundant supplies of coal are available within a radius of 50 to 75 miles from Bone, Iowa, Iowa Electric proposes to use natural gas as fuel for the new boiler. The use of gas at the Boone plant would displace approximately 30,000 tons of coal annually.

(g) It is to meet such fuel requirements that the facilities here involved are proposed to be used at this time. The maximum day and the annual gas requirements of the Boone plant are estimated to be 3,852 thousand cubic feet and 750,000 thousand cubic feet, respectively. Such deliveries are proposed to be made under a contract dated February 19, 1943, providing for the sale by applicant to Iowa Electric of the latter's natural gas requirements.

(h) The evidence clearly shows that, if Iowa Electric were permitted only to use natural gas for the purposes set forth in the Commission's temporary authorization referred to above, the Boone plant could be operated successfully with coal.

(i) Applicant also presented evidence indicating that the facilities referred to in paragraph (a) above could be used by it to sell additional quantities of natural gas to Iowa Electric so that the latter could distribute straight natural gas in the city of Boone in place of the mixed gas it now serves. Although such a change in service has been authorized by a city ordinance adopted March 2, 1944, the record shows that neither applicant nor Iowa Electric intends that such proposed service should commence until some time after the termination of the war when the materials required by Iowa Electric to adapt its own facilities and those of its customers to the use of natural gas are readily available. By reason of the uncertainty and indefiniteness of such plan, the pertinent data and information with respect to such proposed service were not presented as required by the Commission's rules and regulations. Moreover, the evidence further shows that no application has been filed for any increased sale of natural gas to Iowa Electric other than at the Boone power plant and that the quantity of natural gas proposed to be sold (750,000 thousand cubic feet annually) is for the exclusive use of such plant.

The Commission, having considered the application as amended and the record thereon with respect to the matters involved and the issues presented, finds that:

(1) Applicant is engaged in the transportation and sale of natural gas in interstate commerce for resale for ultimate public consumption and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order entered on April 6, 1943, in Re Northern Nat. Gas Co. Docket No. G-280, 3 Fed P C 967.

(2) The facilities described in paragraph (a) above are proposed to be used for the transportation of natural gas, subject to the jurisdiction of the Commission, as integral parts of applicant's existing pipe-line system, and are subject to the requirements of sub-

[3] Iowa Electric uses oil for pilot lighting at its Cedar Rapids, Iowa, plant, the largest on its system, even though gas is readily available for use at such plant.

sections (c) and (e) of § 7 of the Natural Gas Act, as amended.

(3) The record does not contain a sufficient showing that the proposed transportation and service of natural gas to Iowa Electric for use by the latter at its Boone plant as boiler fuel is or will be required by the present or future public convenience and necessity. The evidence, however, does show a need for the operation of the proposed facilities limited to the uses referred to by the Commission in its temporary authorization granted on June 15, 1944.

(4) It is appropriate and in the public interest that the application, as amended, in this proceeding be dismissed in so far as it seeks permission to operate the facilities described in paragraph (a) for the delivery of natural gas by applicant to Iowa Electric for use by the latter as boiler fuel at its Boone electric generating plant, and that the temporary authorization heretofore granted in this matter on June 15, 1944, be made permanent as hereinafter ordered.

(5) Applicant's motion to dismiss the petitions to intervene in these proceedings should be denied.

The Commission *orders* that

(A) The temporary authorization granted applicant on June 15, 1944, to construct and operate the facilities described in paragraph (a) above is hereby made permanent subject to the terms and conditions of this order. The operation of such facilities is limited, however, to the delivery of natural gas to Iowa Electric solely for operation of pilot burners, ignition purposes, and as emergency standby in case of breakdown of coal-handling and coal-burning equipment at the latter's Boone electric generating plant.

(B) The application, as amended, in so far as it seeks authorization to operate the facilities described in paragraph (a) above for the delivery of natural gas by applicant to Iowa Electric for use by the latter as boiler fuel at its Boone Electric generating plant is dismissed without prejudice.

(C) Nothing contained in this order, however, is to be construed to prevent applicant from filing an appropriate application with this Commission for authority to operate the facilities herein authorized in order to sell additional quantities of natural gas to Iowa Electric for distribution by the latter in the city of Boone, Iowa, in place of the mixed gas presently served by it.

SECURITIES AND EXCHANGE COMMISSION

Re North American Light & Power Company et al.

File Nos. 59-39, 54-50, 59-10, 54-82, Release No. 6153
October 23, 1945

PETITION *by subsidiary of two holding companies for Commission intervention to prohibit the holding companies from electing three representatives to the board of directors of the subsidiary company; petition granted.*

Intercorporate relations, § 13.1 — Interlocking directorate.

1. Holding companies may not exercise their voting rights to elect a minority of the board of directors of a subsidiary operating company, which is prosecuting claims against the holding company for alleged past spoliation and mismanagement (in a proceeding relating to simplification of the holding company system under § 11 of the Holding Company Act, 15 USCA § 79k) where the election of such directors might prejudice full and effective disposition of the claims or full and effective competition between the subsidiary and neighboring utilities, p. 75.

Intercorporate relations, § 6 — Jurisdiction of Commission — Suppression of voting rights.

2. The Commission has power to prohibit holding companies from exercising their voting rights to elect a minority of a board of directors of a subsidiary operating company, which is prosecuting claims against the holding companies for alleged past spoliation and mismanagement in a proceeding relating to simplification of the holding company system under § 11 of the Holding Company Act, 15 USCA § 79k, where the election of such directors might prejudice full and effective disposition of the claims or full and effective competition between the subsidiary and neighboring utilities, since the election of the directors is a transaction and a step in the performance of a transaction in contravention of an order designed to prevent circumvention of the act within the meaning of § 12(f) of the act, 15 USCA § 79*l*(f), p. 77.

APPEARANCES: M. B. Kennedy and Leo Tierney, of Mayer, Meyer, Austrian & Platt, Chicago, Illinois, for Illinois Power Company; Clayton E. Kline, Topeka, Kansas; James Masterson, Philadelphia, Pennsylvania; and Thurman Hill, Washington D. C., for North American Light & Power Company and Illinois Traction Company; Lawrence R. Condon, New York city, on behalf of Nellie Walters, et al.; Nathaniel Hyman, for the Public Utilities Division of the Securities and Exchange Commission.

By the COMMISSION: This proceeding arises upon a petition filed by Il-

linois Power Company under the Public Utility Holding Company Act of 1935 (the "Act") respecting a proposal of that company's statutory parents, described below, to elect three men to its board of directors.

Illinois Power Company is a direct subsidiary of Illinois Traction Company. The latter is a subsidiary of North American Light & Power which is, in turn, a subsidiary of The North American Company.[1] North American owns about 83 per cent of the voting stock of Light & Power; Light & Power owns almost 100 per cent of the stock and debt of Traction; and Light & Power and Traction together own slightly more than 26 per cent of the voting securities of Illinois Power.[2]

North American has filed with us a plan proposed as a means of compliance with § 11 (b) (1) of the Act, 15 USCA § 79k (b) (1), Light & Power was ordered to dissolve by us by an order entered on December 30, 1941, 10 SEC 924, 41 PUR(NS) 306. The Commission has approved a plan filed pursuant to § 11(e) of the Act for the liquidation and dissolution of Traction. All the proceedings relating to these matters were consolidated by our order of October 28, 1943.

As part of these proceedings Illinois Power is at present asserting and presenting evidence in support of claims of more than $44,000,000[3] against Traction and Light & Power, and, to the extent that the claims cannot be satisfied from the assets of these companies, against North American on the grounds of alleged past spoliation and mismanagement. Light & Power is urging counterclaims against Illinois. Preferred stockholders of Light & Power are urging a "claim-over" against North American. That is, they are contending that North American controlled Light & Power at the time of the occurrence of the acts by Light & Power which give rise to the alleged claims of Illinois Power and that, therefore, if Illinois Power succeeds in establishing claims against Light & Power, North American should reimburse Light & Power on account thereof. They also claim that certain securities of Light & Power held by North American should be subordinated to Light & Power's publicly held preferred in the liquidation of Light & Power, because of alleged mismanagement of Light & Power by North American. Thus it is apparent that the assets and liabilities of North American, Light & Power, Traction, and Illinois Power are all dependent in one degree or another upon the outcome of these various claims and contentions. The taking of evidence on Illinois Power claims and the "claim-over" has been under way before us since November 16, 1942. The contest has been a spirited one. An action in the United States district court of Del-

[1] The following designations will be used throughout this opinion:
Illinois Power Company—"Illinois Power"
Illinois Traction Company—"Traction"
North American Light & Power Company —"Light & Power"
The North American Company—"North American."
The last three companies are sometimes referred to (individually or collectively) as the "parents" of Illinois Power. Traction, Light & Power and North American are all registered holding companies under the Act.

[2] North American owns directly a small amount of Illinois Power securities.

[3] Illinois Power has recently filed an amendment to and modification of its statement of claims raising substantially the amounts involved.

aware in which Illinois Power is suing North American, Traction, Light & Power, et al., for approximately $44,000,000 (including interest) on the same grounds has been stayed pending termination of the proceedings before us.

The 26 per cent of voting securities held by Traction and Light & Power (entitled to vote cumulatively) can elect three of the nine directors of Illinois Power. Five members of Illinois Power's present board are employees of Illinois Power. The sixth is connected with a firm acting as counsel for the company. There is no dispute that these directors work closely with and are responsive to the president of Illinois Power, Allen Van Wyck, although he is president of a company controlled by North American, Traction and Light & Power, has been vigorous in the prosecution of the company's claims against its statutory parents. Three of the 9-man board of directors were in 1943 and 1944 elected by the parents of Illinois Power. There are some indications that toward the end of 1944, the three parents' designees were unwilling to serve further.

Late in 1944 Traction and Light & Power demanded an inspection of the stock records of Illinois Power for the stated purpose of soliciting proxies for the 1945 annual meeting. Upon receipt of this demand Illinois Power petitioned us to prevent such solicitation without our prior consent. Light & Power then stated to Illinois Power's management that it did not intend to solicit proxies without our consent but wished to inspect the list in order to select the names of possible directors.

In March, 1945, Illinois Power was told by Light & Power that Light & Power intended to elect to the board Robert N. Golding, Nicholas P. Zech. and Robert D. Gordon.

On March 30, 1945, Illinois Power filed the supplemental petition which is the subject of this proceeding. Illinois Power insists that each of the candidates is connected with the Middle West Corporation ("Middle West"), parent of Central Illinois Public Service Company ("CIPS"), that CIPS operates utility properties in contiguous areas to those of Illinois Power, that CIPS and Illinois Power are in substantial competition and face the continual necessity of arm's-length dealing, that there is a substantial possibility that Middle West may wish to acquire stock or property of Illinois Power for integration with CIPS and thus has an interest in defeating Illinois Power's claims against its parents or settling them adversely to Illinois Power, and that election of these men would hinder a fair determination of the claims and full prosecution of arm's-length dealing in the relations between Illinois Power and CIPS.

The petition asks that we issue such order or orders under the Act as are necessary or advisable in the circumstances.

Light & Power and Traction in a joint answer to the petition assert that the Commission has no power to grant any relief to Illinois Power, that the men chosen were selected after careful investigation, that the objections to the candidates are frivolous, that the candidates cannot outvote six directors favorable to Van Wyck, that the petition should be dismissed and that, if the Commission takes any action, it

should also examine into other board members and provide that they be independent of Van Wyck.

A hearing has been held on the petition; requested findings and briefs have been filed and we heard oral argument. There is no basic dispute about the underlying facts we shall discuss. The essential issues are whether the Commission has the power to take action, whether the facts show a need for action, and what action, if any, should be taken.

Before the facts are more fully discussed it should be pointed out that it has not been shown that under Illinois procedure three directors can, through the power of their votes alone, block any action which the present six directors may choose to take. As we shall note, the possibilities of harm claimed by Illinois Power are asserted to arise from the mere presence of alleged adverse interests on the board.

The Men Proposed for the Board

Robert Golding: Golding, a Chicago lawyer, is a director of Middle West. His name was suggested to Ackers, president of Light & Power by John Jirgal, a utilities consultant.[4] The appointment for a meeting between counsel for Light & Power and Golding was made by P. L. Smith, the then president of Middle West. Golding asked Smith whether election to the board would involve Golding in any conflict with his interests in Middle West. Smith said it would not.

Golding met Light & Power's counsel for the first time at this meeting. He accepted the offer of a directorship without hesitation.[5]

Nicholas Zech: Zech had been employed by the receivers of Middle West Utilities Corporation, and, from the time of organization of Middle West to succeed that company in 1935, was employed as Middle West's comptroller. In 1944, Zech was retired under a pension plan of Middle West over which Middle West has no further control. Zech now does business in his own name as a utility consultant, maintaining an office in association with several other former Middle West employees. Zech's name was apparently suggested by one of the retiring Illinois Power directors designated by Light & Power. The record indicates that P. L. Smith knew of the decision to invite Zech. It does not indicate how he got his knowledge.

Robert Gordon: Gordon is a large stockholder and director of Ashland Oil & Refining Company, of which W. C. Freeman, formerly vice president of Middle West, is also a director. Gordon is friendly with Freeman and he mentioned the invitation to Freeman before accepting it. It appears that Gordon was first approached with the invitation by H. L. Hanley, a former member of Light & Power and Illinois Power management.

The following additional facts appearing in the record are set forth by Illinois Power as relevant to the connection of Middle West with the choice of the nominees:

a. The three candidates were un-

[4] Jirgal presented other names at Ackers' suggestion. It is claimed by petitioner to be significant that Golding was the only one on that list followed up and considered by Light & Power.

[5] In a letter thanking Golding for his acceptance Ackers asked Golding if he could suggest other candidates.

known to Ackers for any substantial period prior to their selection.

b. The three candidates knew each other.

c. Three of the men involved in suggesting and selecting the candidates have known P. L. Smith for some time. They are Ackers, Jirgal and Hanley.

d. The three candidates were the only ones interviewed although other names had been suggested, among them those of twenty-four large holders of Illinois Power stock.

e. The candidates accepted the invitation soon after if was made. (Golding did so immediately, Zech and Gordon within several days—the exact periods are not clear.)

f. P. L. Smith and Shea, president of North American, were conferring in New York about Smith's testimony in the claims proceeding in January, February, and March of 1945, the general period in which the candidates were chosen.[6] Ackers, president of Light & Power, was in New York toward the end of December, 1944, conferring with Shea.[7]

The Relations of Illinois Power with Surrounding Companies

a. *Power Supply*

Illinois Power is an operating company whose territory is scattered throughout the state of Illinois. In northern, central and southern parts of the state its territories adjoin, and in some cases are completely surrounded by, those of CIPS, a subsidiary of Middle West. Its large territory in the southwestern part of the state adjoins that of Union Electric Company of Illinois (now known as Union Electric Power Company). That company is a subsidiary of Union Electric Company of Missouri, in turn a subsidiary of North American.

Illinois Power is extraordinarily dependent on outside sources of power. Only about 8 per cent of the power it sells is produced in its own generating stations; the remaining 92 per cent is purchased. The following chart shows the sources and amount of energy purchased, and costs. CIPS is underlined by a broken line. Companies underlined with a solid line are subsidiaries of North American. As is clear from the chart, Illinois Power depends upon subsidiaries of North American for the largest portion of its power and received the remainder from other sources, including the Middle West system.

[6] Van Wyck testified that he had heard that in 1943 P. L. Smith, president of Middle West, and the First National Bank of Chicago had both submitted a list of candidates to Light & Power for election to Illinois Power's board. No such testimony was given respecting later elections, nor was the testimony given followed up or fully explored. It does not appear that any candidates on Middle West's list were elected.

[7] Ackers, however, claims that he did not discuss the pending petition at these meetings.

ILLINOIS POWER COMPANY
Purchased Power—Year 1944

Purchased From	Kilowatt Hours	Total Charges
Central Illinois Public Service Company—		
Under contract dated February 1, 1939	15,662,700	$116,655.60
Under contract dated April 15, 1938	1,333,844	16,673.06
Central Illinois Light Company	63,797,000	360,825.73
North Counties Hydro Electric Company	10,313,595	51,567.98
Commonwealth Edison Company—		
Under original contract	379,168,660	1,660,519.70
Under supplemental contract	5,440,100	54,427.90
Union Electric Company of Illinois	548,918,603	3,314,372.82
Mississippi River Power Company	43,188,000	265,301.35
Iowa Union Electric Company	2,605,333	24,069.53
University of Illinois	274,100	2,466.90
Libby Owens Ford Glass Company	42,829,400	219,368.52
City Water, Light and Power, Springfield	64,689,400	347,166.07
Totals	1,178,220,735	$6,433,415.16

This dependence on outside sources is a result of the history of Illinois Power. Material elements of that history are now in litigation and we do not undertake to make any findings affecting the outcome of that litigation. But it may be noted that prior to 1926 Light & Power was controlled by what was commonly called the Studebaker Group, that in 1926 it became known that this group's interest in Light & Power could be acquired. At that time North American controlled operating properties in Missouri and Illinois adjoining properties of Light & Power, while Middle West and other interests dominated by Samuel Insull, who controlled Middle West, controlled operating properties in Illinois and Indiana adjoining properties of Light & Power. A contest between North American and the Insull interests for the control of Light & Power seemed to impend. Thereupon, during a convention of the National Electric Light Association, representatives of North American, Middle West and Light & Power met and discussed means of avoiding a contest. Not long thereafter an arrangement was made by which North American and Middle West each acquired 42½ per cent of the common stock of Light & Power, the "Studebaker Group" retaining the remaining 15 per cent of Light & Power common.[8] Shortly after the acquisition of these interests in Light & Power by North American and the Insull interests, Union Electric Company of Illinois acquired the largest generating station of Illinois Power and entered into contracts to supply current to Illinois Power. Arrangements were made also to supply Illinois Power from the Insull-controlled Powerton station and from CIPS (then a subsidiary of Middle West Utilities Company—an Insull company and predecessor of Middle West).

From the power supply standpoint Illinois Power has been partially dependent upon the Middle West system. That CIPS still has a lively interest in maintaining its supply position is indicated by the fact that recently

[8] As a result of the bankruptcy of Middle West and other later events not here material North American survived as the dominant interest in Light & Power.

when Illinois Power asked the War Production Board for priorities to build a plant at Havana, Illinois, on the Illinois River, CIPS filed a competing application for a plant. Illinois Power's request was granted—and it is now claimed that it will proceed to build a plant as soon as conditions permit.[9]

b. *Property Acquisitions*

Illinois Power operates in three relatively large and four small areas throughout the State. Each of the seven areas is isolated from all the others. Of the small areas two are wholly and two are partially surrounded by CIPS territory. Two of the large areas are separated by CIPS territory and the third adjoins CIPS territory to a substantial extent.

A program of rationalizing property ownership in the territory may require substantial acquisitions and sales as between CIPS and Illinois Power. Illinois Power has claimed that there is a likelihood that the Middle West system may seek to acquire the properties or a controlling interest in the stock of Illinois Power as a whole for integration with CIPS. Admittedly this "likelihood" was based on rumors reported to Van Wyck, although Van Wyck stated that the rumors were persistent. There are no known negotiations for such acquisition presently taking place. Upon this possibility has been constructed the theory that it would be to Middle West's advantage to have the claims proceeding terminate adversely to Illinois Power. The reasons are as follows: (a) If Illinois Power should come out of the proceedings with a substantial increase in assets by virtue of recovery or settlement, it would be more expensive to Middle West to acquire a controlling block; (b) If Illinois Power's parents' holdings should be canceled Middle West would be remitted to gathering control from small scattered holdings.

c. *New Business*

Rural coöperatives serve farm areas in the territory of Illinois Power and CIPS; such coöperatives and other rural population not yet served at the fringes of their territory are an area of possible competition.

d. *Other Competitive Matters*

Illinois Power alleges that its rates are, in general, lower than those of CIPS. It is testified that CIPS has protested against Illinois Power's program of reducing rates and that the presence of directors beholden to Middle West might prejudice continued rate reduction since these directors might wish to spare CIPS the embarrassment of operating in the same area with a company whose rates are lower.

Similar arguments are made with respect to differences in labor standards, methods of dealing with coöperatives, and policy respecting the acquisition of properties by governmental subdivisions.

Conclusions as to the Middle West Aspects

[1] Our conclusions on the Middle West aspects are:

There is actual and potential com-

[9] Van Wyck testified that a previous president of Illinois Power, J. D. Mortimer, was ousted by the system management for making commitments to supply independent generating facilities for the company. Van Wyck admitted however that Mortimer's commitments were in excess of Illinois Power's available funds.

Of course, we make no finding on these points at this time.

petition between Illinois Power and CIPS.

The interests of Illinois Power and CIPS are adverse in certain important respects specified above and may well become even more so.

The existence of interlocking directors between Illinois Power and Middle West, which controls CIPS, is against the public interest and the interests of both Illinois Power and CIPS. This is especially so during the liquidation of Light & Power and the disposition of its assets, which include its interests in Illinois Power whatever they may turn out to be.

The restraint of "free and independent competition," one of the evils aimed at in this Act (§ 1 (b) (2)), 15 USCA § 79a (b) (2) includes the restraint arising from the creation of interlocking relations which are against the public interest.[10]

Connections between Middle West and Zech and Gordon sufficient to warrant refusing a place on the board because of their affiliations alone have not been established. Golding on the other hand is a director of Middle West and cannot in our opinion be placed in the same category.

However this does not dispose of the controversy before us since we must still consider how it is affected by the claims cases.

The Significance of the Claims Case

Pursuant to § 11 of the Act the North American system must be reorganized, and Traction and Light & Power must be dissolved, on a fair basis.[11] Our jurisdiction to hear the claims asserted by Illinois Power and the "claim-over" rests largely on the necessity of a full record of the facts giving rise to these claims in determining what plans are fair and what the assets and liabilities of the various companies are. Those determinations cannot be reached unless the record is independently made, by parties free of conflicts in interest. A compromise in this case in order to be of any real value as the basis of a plan, must be reached as a result of completely independent dealing. These aims cannot be achieved without a strict respect for the corporate entities of Illinois Power and its parents, and without rigorous regard for the fact that Illinois Power's parents are not merely stockholders but adverse quasi-parties in a proceeding which pits their interests against those of public security holders in Illinois Power and Light & Power.

We do not see how the directors and management of Illinois Power can

[10] For example, § 10(b)(1), 15 USCA § 79j(b)(1) provides that we may not approve an acquisition of an interest if "such acquisition will tend towards interlocking relations or the concentration of control of public-utility companies of a kind or to an extent detrimental to the public interests or the interest of investors or consumers."

In considering these problems we must bear in mind the general policy of Congress. That policy, as expressed in the Clayton Act (15 USCA § 19) is against interlocking directors among competitors in interstate commerce—as Illinois Power and CIPS, a Middle West subsidiary, are. See McLean Trucking Co. v. United States (1944) 321 US 67, 88 L ed 544, 53 PUR(NS) 473, 64 S Ct 370.

[11] There are several indications that Illinois itself is in need of reorganization both for good business reasons and to accomplish compliance with the Act. Thus it appeared that a filing of that company under the Securities Act of 1933 and the refinancing of its debt were greatly impeded by its balance sheet situation and various factors described in our opinion, Re Illinois Power Co. (1944) Public Utility Holding Company Act Release No. 4815. We have issued an order setting for hearing the question whether Illinois should be reorganized to conform to § 11(b)(2) of the Act (Public Utility Holding Company Act Release No. 2953, Aug. 22, 1941).

engage in a frank discussion of its plans for prosecuting claims and developing evidence or for trading out a compromise if one becomes possible in the presence of directors chosen by Light & Power and North American. Nor do we believe that directors so chosen can isolate themselves from knowledge of what goes on within the Illinois Power board and management, or fail to be a source of embarrassment and suspicion to the Illinois Power representatives, or that they can act with complete loyalty to both Illinois Power and the North American interests. North American and Light & Power should stay on their own side of this controversy—if a compromise is ever reached[12] and presented to us we wish to approach it with the knowledge that it was bargained out at arm's length.

We think it clear that Illinois Power has shown the need to prevent the election of any representatives of its parents to its board while the claims are pending especially at this point where the proceedings are reaching the stage of imminent disposition.[13]

We have carefully considered alternatives to the action we take in this case, including the possibility that election of the proposed candidates be permitted with appropriate conditions designed to insure that they would absent themselves from all meetings in which the claims of Illinois Power against its parents or matters affecting Illinois Power's relations with CIPS and Middle West are considered; that they would refrain from all attempts to exercise any influence on the management with respect to these matters, either officially or otherwise; and would refrain from seeking or transmitting to adverse interests any inside knowledge on these matters. However, we rejected this alternative for the reason (among others) that apart from any question as to our legal power to impose such conditions there would be practical difficulties in the way of enforcing them effectively or without opening the door to protracted litigation further delaying a system reorganization. Thus, notwithstanding our reluctance to interfere with normal corporate relations, we have decided to issue an order preventing the vote.

The Commission's Power to Act

[2] The Act contains the guides to its own construction. Section 1 (c) declares the policy of the Act to be to eliminate the evils enumerated in § 1 (b) and it directs that "all provisions of this title shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section."

Among the evils enumerated are those arising when subsidiaries of holding companies enter into trans-

[12] Several attempts to compromise have been made thus far without success.

[13] We do not intend to say that every parent against which claims are made by a subsidiary should not be permitted to vote its stock in that subsidiary. Among the factors we have considered here are that in this case Light & Power is under order to dissolve; the extent of the very interest it seeks to have represented is now in issue; we have been for some time in a technical position to apply to a Federal district court to have the entire administration of Light & Power's affairs taken out of the hands of its managers altogether and placed in the hands of a trustee; and finally in this case the management has, from the very beginning, prosecuted the proceeding with apparent independence and vigor and we think it has sufficiently demonstrated that if new representatives of the company's parents are permitted to join the board at this stage of the controversy a positive threat will arise that the existing independence might be impaired and the prosecution or settlement interfered with.

actions in which there is "an absence of arm's-length bargaining" or a "restraint of free and independent competition." (Section 1 (b) (2).)

The policy embodied in § 1 is directly implemented by § 12 (f), 15 USCA § 79*l* (f), which provides:

"It shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to negotiate, enter into, or take any step in the performance of any transaction not otherwise unlawful under this title, with any company in the same holding-company system or with any affiliate of a company in such holding-company system in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules and regulations thereunder."[14]

Whether § 12 (f) standing alone, is authority for prevention of a vote depends upon whether (a) the election of directors would be a "transaction" performed by Light & Power, or, (b) even if it is not, whether it may be deemed as the taking of a "step in the performance of any transaction" within the meaning of § 12 (f).

(a) It is our view that the election of a director of a company is a transaction within the meaning of § 12(f). In previous subsections provisions are made respecting borrowings, extensions of credit and indemnities (§§ 12 (a) and (b)); payment of dividends, acquisition, retirement, and redemption of securities (§ 12(c)); sales of securities or utility assets (§ 12(d)); and the solicitation of proxies, consents, or authorizations (§ 12(e)). Subsection (f), as is obvious on its face, was intended as a catch-all to insure the Commission's jurisdiction to issue rules or orders whenever necessary to maintain competitive conditions or for other stated purposes.

The breadth of scope intended in § 12(f) is shown also by its legislative history. The bill as originally presented to Congress limited the application of the section by using the words "competitive bidding" in place of the present phrase "maintenance of competitive conditions." In proposing the amendments which brought about the change Senator Barkley said:

"The use of the words 'competitive bidding' is rather restrictive, and would apply only in cases where there was a process of bidding which was intended or supposed to be competitive. The amendments broaden the language so as to substitute 'maintenance of competitive conditions.' That may go beyond the mere bidding for contracts and one thing and another of that sort."

At another point, Senator Barkley said:

". . . this is one of a series of amendments agreed to last Friday in order to make the language still broader. The language now written into

[14] The fostering of arm's-length bargaining is a keynote of this legislation. References to it will be found (inter alia) in §§ 2(a) (11), 12(d), 12(f), 12(g), 13(c), 13(e), and 13(f).

the bill refers only to competitive bidding. This amendment would make it applicable to competitive conditions, and two other amendments of the same sort have already been agreed to." [15]

In commenting on this section in Re Dayton Power & Light Co. (1941) 8 SEC 950, 984, 38 PUR(NS) 129, 159, we said:

". . . it is plain that Congress not only contemplated rules which would maintain competitive conditions generally in the utility industry . . . —certainly not excluding security transactions—but expressly contemplated competitive bidding as one of the means of achieving that end. We have sought by our rule to maintain competitive conditions in security transactions of utilities by a means short of universal competitive bidding. Considering the various sections of the statute which contain the phrase 'maintenance of competitive conditions,' in relation to the general scheme of regulation revealed in the entire Act, it is apparent that in performing our broad duties in connection with security issues of determining terms and conditions that are necessary or appropriate in the public interest Congress intended to include, along with the more sweeping regulatory powers, the power to impose whatever requirement the Commission might find necessary or appropriate to secure the 'maintenance of competitive conditions.' "

Congress has made it clear that its concern was not to reach certain limited forms of activity but, whatever the activity, to ensure that it shall be regulated to preserve certain stated standards. In using the word "transaction" Congress found the nearest approximation to the broad policy set forth in § 1. Common usage of the term denotes activity of any commercial kind which fixes, alters, or is in pursuance of, commercial relations; [16] the law has in general fostered the widest usage of the term—as any legal compilation under it will attest; and its coverage of any activity in the holding company subsidiary context which might impair the stated purposes of the Act is clear from the placement and legislative history of § 12(f) and from Congress' own direction as to the method of its construction.

(b) "To take any step" in the performance of "any" transaction in contravention of Commission rules or orders respecting stated standards is likewise prohibited under § 12(f). Even if the election of directors is not regarded as a "transaction" it may, where the facts are appropriate, be considered as a "step." A showing that the election of directors is effected in pursuance of a program of anticipated dealings with a subsidiary seems to us clearly to establish the election as a "step" in the performance of "any" transaction. Section 12(f) is prospective in its operation, and is therefore basically prophylactic. Its purpose is to prevent the occurrence of the evils against which the Act was designed. Those evils arise, in large measure, from the influence exerted over subsidiaries by holding companies and that influence is exerted by the vote. In a case in which exercise of the vote may so condition future transactions as to deprive them of the vital element of competition, or to permit circum-

[15] See 79 Cong. Rec. 8846 and 8931, respectively, for the above quotations.

[16] See Re Kidder, Peabody & Co. (1945) Securities Exchange Act Release No. 3673.

vention of the provisions of the Act we believe it clear that we may prevent that exercise under § 12(f).

We do not intend to say that § 12 (f) gives the Commission indiscriminate power to terminate voting rights. While inequitable distribution of voting power is to be cured under the Act it is clear that the reorganization process under § 11 is the manner in which Congress intended that such inequities should be cured.

However, this does not mean that the Commission cannot prevent the exercise of the vote in a particular instance in which such exercise would be an abuse—might, because of the suppression of full competition, result in irrevocable harm which cannot be cured through the processes of § 11.

Section 12(f) invokes all the standards of the Act; under it the Commission may issue orders "to prevent the circumvention of the provisions of this title or the rules and regulations thereunder." One of the requirements of the Act is expeditious compliance with § 11 by fair and equitable means. We are now hearing claims and counterclaims between Illinois Power and Traction and Light & Power and a claim-over against North American as part of our administration of § 11 respecting the system. We have issued an order setting for hearing the question of the application of § 11(b)(2) to Illinois Power. Light & Power is under order to dissolve. Fair and equitable compliance by all these companies requires effective prosecution and/or arm's-length settlement of the various claims. The presence of Light & Power candidates, which we have found will impair full prosecution or fair settlement or otherwise circumvent the provisions of the Act, is a sufficient ground for taking appropriate steps under § 12(f).

Even if we assumed that, notwithstanding the circumstances of this case, Illinois Power's parents had "normal" voting rights, the prevention of exercise of normal voting rights to protect the integrity of our procedure under § 11 is not novel. In 1941 we ordered Light & Power to refrain from holding a stockholders' meeting (except to adjourn) in which it was proposed to vote on the question of dissolving Light & Power under state law, and we ordered North American to refrain from voting its holdings on that proposal. We cited § 12(d) as a partial basis for our power since the proposed dissolution and consequent liquidation would involve a sale, within the meaning of that section, and a liquidation outside of the ambit of § 11 would circumvent the provisions of the Act. Re The North American Co. (1941) 9 SEC 617.

However, the force of that opinion lies mainly in the fact that the Commission was acting to protect its jurisdiction under § 11 rather than in a technical construction of § 12. So here the dominant basis for the Commission's power is the need to prevent prejudice to the expeditious and equitable reorganization of system companies under § 11.

Light & Power argues that § 17(c), 15 USCA § 79q(c), dealing with the constitution of boards of directors of system companies, exhausts Congress' intentions on the subject of directors. That section provides:

"After one year from the date of the enactment of this title, (August 26, 1935), no registered holding company

or any subsidiary company thereof shall have, as an officer or director thereof, any executive officer, director, partner, appointee, or representative of any bank, trust company, investment banker, or banking association or firm, or any executive officer, director, partner, appointee, or representative of any corporation a majority of whose stock, having the unrestricted right to vote for the election of directors, is owned by any bank, trust company, investment banker, or banking association or firm, except in such cases as rules and regulations prescribed by the Commission may permit as not adversely affecting the public interest or the interest of investors or consumers."

The error of this argument is clearly revealed when the case is viewed in its proper context. Section 17(c) indicates that Congress was aware of the evils arising when banking interests maintained management affiliations with holding companies and subsidiaries. But it does not indicate that the Commission's concern with boards of directors is to cease once the Commission determines that boards do not contain banking affiliates.

The statute not only vests the Commission with the job of requiring compliance with § 11 and of testing plans of compliance for fairness and equitableness but specifically vests it with power to make "such orders as it may deem necessary or appropriate to carry out the provisions of this title"—including § 11 (§ 20(a)) and to stop the making of any transaction or the taking of any step to effectuate any transaction in contravention of an order designed to prevent circumvention of the Act. (§ 12(f).)

There is little merit in an argument that these provisions, especially in the context of a statute aimed at the subtle and diverse abuses brought about by management affiliations, must be construed to fall short of giving the Commission the authority to protect the integrity of § 11 by sterilizing the vote.

The management of Illinois Power, in that company's claims against its parents, is acting as a representative of the company's public security holders. A representative of a class, suing on behalf of the class, is, in a sense, a fiduciary for the members of the class in respect of that action, and his conduct of the litigation is subject to scrutiny of the tribunal to the end that he represent his class fully and fairly. For example, he cannot settle the litigation on his own behalf, ignoring the rights of others (Cf. Young v. Higbee Co. [1945] 324 US 204, 89 L ed —, 65 S Ct 71). He will not be permitted to conduct the litigation or bind the class in the litigation if the court deems him not to be an adequate representative of the class, Pelelas v. Caterpillar Tractor Co. (1940) 113 F2d 629, or to have interests in conflict with those of the class, Hansberry v. Lee (1940) 311 US 32, 85 L ed 22, 61 S Ct 115, 132 ALR 741.

The needs giving rise to these judicial doctrines are the same as those existing in the quasi judicial procedure under § 11, and any doubt that we can use reasonable means to answer those needs, in our opinion, is dispelled by the express language of §§ 12(f) and 20(a).

An appropriate order will issue.

TEXAS SUPREME COURT

United Gas Corporation

v.

Shepherd Laundries Company, Incorporated

No. A-331
— Tex —, 189 SW2d 485
July 18, 1945; rehearing denied October 17, 1945

APPEAL *from judgment for customer in action based on inequality of gas rates; reversed and remanded. For decision by Court of Civil Appeals, see (1944) 55 PUR(NS) 351, 181 SW2d 929.*

Discrimination, § 17 — Rate inequality — Overcharge distinguished.

1. A discrimination may arise from a mere inequality in rates, but an overcharge arises only when the rate charged is unreasonable in and of itself, irrespective of the rate exacted of others, or when it is in excess of the rate established for the particular customer or business, p. 86.

Reparation, § 46 — Overcharge — Evidence.

2. In a suit for overcharges, the rate paid by others is immaterial, as it is only in suits for damages for discrimination that rates charged others are important, p. 86.

Reparation, § 23 —Discriminatory rates — Proof of damage.

3. A suit by a customer against a public utility to recover because of charges in excess of rates charged to others, when no claim is made that the rate charged is unreasonable, is not a suit for overcharge but for discrimination, where competition between ratepayers is a factor and damages must be alleged and proved, p. 86.

Discrimination, § 3 — Recovery of damages.

4. A customer before he may recover for mere discrimination in rates must allege and prove his loss as in tort, p. 90.

Appeal and review, § 68 — Remand — Erroneous theory of trial — Overcharge or discrimination.

5. An action by a customer to recover because of inequality of gas rates should be remanded, upon reversal because of a decision in favor of the customer after trial upon an erroneous theory, instead of the appellate court rendering judgment for the company, p. 93.

Discrimination, § 17 — Rates — Inequalities — Damages.

Review of history of the development of law relating to inequalities in rates and the measure of damages for discrimination in charges, p. 86.

Discrimination, § 3 — Damages — Competition between parties.

Discussion of the development of the American rule requiring competition

between the parties before damages may be recovered for discrimination in rates, p. 88.

APPEARANCES: Baker, Botts, Andrews & Wharton and Walter H. Walne, all of Houston, and Black, Graves & Stayton and Chas. L. Black, all of Austin, for petitioner; Edward S. Boyles and M. U. S. Kjorlaug, both of Houston, for respondent.

FOLLEY, Commissioner: This suit was instituted in Harris county by the respondent, Shepherd Laundries Company, Inc., against the petitioner, United Gas Corporation, for damages because petitioner charged respondent a higher rate for natural gas furnished it in Houston for certain periods between June, 1934, and October, 1942, than it did other customers in that city "under similar and like circumstances." The petition of respondent charges that during such period the gas company, and its predecessor in business, supplied gas to respondent at 19 cents per thousand cubic feet for the first 1,000 per month, 18 cents for the next 9,000 cubic feet, and 17 cents for all additional gas used during the month, while during the same period gas was furnished to other customers similarly situated at lower rates. This suit is for the difference between the rate paid by respondent and the lower rate paid by other similar customers. Based upon jury findings that the favored customers were served under similar and like circumstances, and upon undisputed facts that they received gas at lower rates, judgment was rendered for respondent in the sum of $5.094.10, which was affirmed by the court of civil appeals. (1944) 55 PUR(NS) 351, 181 SW 2d 929.

The petitioner's chief contention is that respondent is not entitled to recover because no claim was made that the rate charged it was unreasonable or that the lower rate given to other customers caused respondent any loss or damage in its business. In this connection it further asserts that this is merely a case of discrimination in rates, not involving an overcharge, and that the measure of damages in such instances is not the difference in the two rates but the actual loss, if any, suffered as a result of the lower rates to others, which damage must be alleged and proved as in the case of all other torts. In passing on this question we must first determine the exact nature of respondent's suit.

The respondent did not assert that it paid an unreasonable rate or that the lower rate extended to certain other customers had been duly established by the utility company or any rate-making body as the rates applicable to its business. Its claim was not that it had paid more than was due under an established rate, but simply that others paid less, and that this mere inequality in rates subjected it to a discrimination in violation of Art 1438, Vernon's Ann Civ Stat. It was alleged that during part of the time respondent was paying the 19–18–17-cent rate, above mentioned, such customers in Houston as Public Laundries, Ineeda Laundry, Port City Packing Company, Fehr Baking Company, and St. Joseph's Infirmary, in the

same classification and under similar situations, were furnished gas by petitioner at 14–13–12 cents for like amounts; and that at other times during such period Oriental Textile Mills, Texas Creosoting Company and the United Creosoting Company were being furnished gas at 16 cents for the first 1,000 cubic feet and 15 cents for all additional gas. It was not alleged that any of the customers receiving the lower rates were competitors of respondent or that it had suffered any actual loss in its business or otherwise as the result of the action of the utility company in extending lower rates to others. More specifically, it did not allege that it had suffered a loss in an amount equal to the difference between what it had paid under the higher rates and what it should have paid under the lower rates. The petition concludes with the allegation that the giving of the lower rates was a discrimination against it and the prayer is for the difference between the higher and the lower rates.

The jury found that all of the above-named customers of petitioner were consumers under similar and like circumstances as respondent. There were no findings or proof of actual damages or that the rates charged respondent were unreasonable.

There are two utility companies furnishing gas to citizens in Houston and vicinity, one of which is petitioner. At the time of the trial petitioner was serving a total of 83,524 customers. Of this number 76,098 were residential customers 6,048 were commercial customers and 366 were industrial customers. Respondent was of the latter class.

Houston is a home rule city and has the power to fix rates for all public utilities operating in it. Article 1175, Vernon's Ann Civ Stat. In 1925 the city council fixed $1.05 per thousand cubic feet as the maximum rate at which all gas might be sold in the city of Houston. By subsequent ordinances the rates for residential and commercial consumers were successively reduced, but no ordinance was ever passed reducing the maximum rate of $1.05 for industrial customers. It left lesser rates for such users to be fixed by the utility company. Article 1435, Vernon's Ann Civ Stat confers upon such utility corporations the right to fix reasonable rates for gas to all customers. The fixing of such rates by utility corporations is limited by Art 1438, Vernon's Ann Civ Stat, which prohibits discrimination in rates or service "under similar and like circumstances." Any rates fixed by the utility company may be supplanted by rates fixed by the city or the Railroad Commission of Texas as provided by law. Article 6053, et seq., Vernon's Ann Civ Stat. But neither of such governing bodies ever fixed any rates in Houston for industrial customers. The Railroad Commission has uniformly refused to fix rates for the sale of gas to industrial consumers anywhere in Texas. An example of such policy and the reason therefor will be found in the Commission's opinion in Re Community Nat. Gas Co. (1936) 15 PUR(NS) 149, 164, as follows:

"It is not our purpose or intention in this proceeding to fix the purchase price or sale price for industrial gas for the reason that the sale price for industrial gas fluctuates along with the price of other competitive fuels."

All industrial customers of petitioner were served under written-term contracts in which there were embodied the rates which had been established by the utility company for the class of business to which the customer belonged. A total of sixty-four industrial customers, including all laundries, were served at the 19–18–17-cent rate charged respondent. This rate was denominated as the Gulf Coast Rate Division Industrial Service Schedule IS #3. In fixing these rates the following factors were considered: (a) Load factors; (b) volume consumed on an annual basis; (c) value of service to customer; and (d) competition between gas and other fuels as well as competition between customers for whom the rate is designed.

It was in keeping with these factors that the rate of 16–15 cents was extended to the Oriental Textile Mills and the two creosoting companies between May 1, 1937, and October 10, 1942. There was no showing that these rates were not those established for the industries to which they were applied nor was there any proof that these rates were applicable to respondent's business. However, the rates extended these three companies furnished the basis for $3,539.41 of the amount of the total recovery against petitioner in the sum of $5,094.10.

The remainder of the recovery in the sum of $1,554.69 was predicated upon lower rates extended to Public Laundries and certain refunds by reason thereof given to St. Joseph Infirmary, Fehr Baking Company, and Port Side Packing Company. The discrepancy arose by virtue of a fuel oil adjustment agreement in written contracts with certain industrial users. The contract of this type with industrial consumers served at the 19–18–17 cent rate provided that the monthly bills for gas service should be decreased or increased at the rate of one-sixth of one cent per thousand cubic feet of gas delivered for each one cent per barrel decrease or increase from $1 per barrel of Gulf Coast Grade "C" Bunker fuel oil, in cargo lots, plus 20 cents per barrel for transportation, storage, handling and other miscellaneous expenses incident to the sale of such oil. It further provided that in no event should such decrease or increase exceed 5 cents per thousand cubic feet. In the early part of 1933, when the price of fuel oil was very low, the utility company authorized the making of contracts with industrial customers served at the 19–18–17 cent rate whereby the oil adjustment clause in Rate Schedule IS #3 should be waived for a period of one year and that during such time the customer should pay for gas used at the net rate in "Rate Schedule IS #3 minus 5 cents per thousand cubic feet for all gas used."

On June 29, 1933, the utility company entered into such a contract with Public Laundries. The main body of the contract contained a stipulation for the 19–18–17 cent rate designated as Schedule IS #3 for a term of two years beginning June 1, 1933, and containing the old fluctuating fuel oil clause. However, by rider attached to and made a part of such contract the fuel oil clause was suspended and a flat reduction of 5 cents from the IS #3 rate was effectuated. This rider stipulated that the waiver should also extend for the 2-year period. The respondent and others of the same class

who had contracts with the fuel oil adjustment clause received such 5-cent reduction for one year only. The testimony from the utility company witnesses, which is uncontroverted, was to the effect that the reduction given Public Laundries for two years instead of one was by mistake and, based on the then current prices of fuel oil, was not justified, however, whether such reduction was by mistake or by deliberate design becomes immaterial under our disposition of this cause.

[1–3] The significant thing about the contract with Public Laundries is that the rate schedule attached to it recites that the IS #3 rate is the one applicable to any customer contracting to use gas for industrial or other purposes for which no specific schedule is provided, which is the same rate that was charged respondent. This clearly indicates that the IS #3 rate was the one applicable to the business of Public Laundries, as well as that of respondent, and that any lower rate was a deviation from the schedule provided for such establishments. This is the important element which distinguishes an overcharge from a discrimination. "Every overcharge, when exacted of one to the exclusion of others, is indeed, a discrimination. Not every discrimination is an overcharge." Postal Teleg.-Cable Co. v. Associated Press, 228 NY 370, PUR1920E 1, 127 NE 256, 259. As will be seen from the authorities hereinafter discussed, a discrimination may arise from a mere inequality in rates but an overcharge arises only when the rate charged is unreasonable in and of itself, irrespective of the rate exacted of others, or when it is in excess of the rate established for the particular customer or business. In a suit for overcharges the rate paid by others is immaterial. It is only in suits for damages for discrimination that rates charged others are important. It is therefore evident that respondent's suit is not for overcharge but for discrimination where, as will hereinafter more fully appear, competition between ratepayers is a factor and damages must be alleged and proved. However, respondent seems to ignore these fundamentals and bases its suit solely upon the theory that it should be entitled to recover simply because it paid a certain rate and others paid less.

Before discussing the authorities governing this case, we deem it advisable to review briefly the history of the development of law relating to inequalities in rates and the measure of damages for discrimination in charges.

Judge Story makes this statement of the common-law rule on this subject in Story on Bailments, 8th Ed. 1870, § 508a, as follows:

"But at common law a common carrier of goods is not under any obligation to treat all customers equally. He is bound to accept and carry for all, upon being paid a reasonable compensation. But the fact that he charges less for one than for another is only evidence to show that a particular charge is unreasonable; nothing more. There is nothing in the common law to hinder a carrier from carrying for favored individuals at an unreasonably low rate, or even gratis."

A similar announcement of the rule was made by the English House of Lords in Great Western R. Co. v. Sutton, L. R. 4 H. L. 226, 237, decided in 1869, to this effect:

"At common law a person holding himself out as a common carrier of goods was not under any obligation to treat all customers equally. The obligation which the common law imposed upon him was to accept and carry all goods delivered to him for carriage according to his profession (unless he had some reasonable excuse for not doing so) on being paid a *reasonable* compensation for so doing; and if the carrier refused to accept such goods, an action lay against him for so refusing; and if the customer, in order to induce the carrier to perform his duty, paid, under protest, a larger sum than was reasonable, he might recover back the surplus beyond what the carrier was entitled to receive, in an action for money had and received as being money extorted from him.

"But the fact that the carrier charged others less, though it was evidence to shew that the charge was unreasonable, was no more than evidence tending that way. There was nothing in the common law to hinder a carrier from carrying for favoured individuals at an unreasonably low rate, or even gratis. All that the law required was, that he should not charge any more than was reasonable."

The latter statement of the common-law rule was expressly approved by the supreme court of Texas in Railroad Commission v. Weld & Neville (1903) 96 Tex 394, 405, 406, 73 SW 529, 532.

Other cases which state and discuss the English rule are as follows: Baxendale v. Eastern Counties R. Co. (1858) 27 LJCP 137, 140 Eng Reprint 1004; Fitchburg R. Co. v. Gage (1859) 12 Gray (78 Mass) 393; Hungerford Market Co. v. City Steamboat Co. (1860) 30 LJQB 25, 121 Eng Reprint 479; Garton v. Bristol & Exeter R. Co. (1861) 30 LJQB 273, 318, 121 Eng Reprint 656; Branley v. South Eastern R. Co. (1862) 31 LJCP 286, 142 Eng Reprint 1066; Johnson v. Pensacola & Perdido R. Co. (1878) 16 Fla 623, 26 Am Rep 731; Ex parte Benson & Co. (1882) 18 SC 38, 44 Am Rep 564; Cowden v. Pacific Coast S. S. Co. (1892) 94 Cal 470, 29 Pac 873, 18 LRA 221, 28 Am St Rep 142.

The courts of the United States in undertaking to apply the old English common-law rule developed an exception thereto. This exception required equality in rates between competitors in business, whereas, as above shown, the common-law rule did not require equality at all, but only that no person should be charged more than a reasonable rate. The American exception requires equality where the favored and disfavored parties are competitors in business and allows a recovery for actual loss or damage, if any, that may be alleged and proved by the disfavored competitor. In each of the cases developing the American rule the court had before it a complaint as to inequality of rates as between competing shippers or customers. The giving of preferential rates thus gave the favored party an advantage in trade, enabling him to undersell others or to increase his profits and thus ultimately destroy competition and create a monopoly in his particular field.

Our text writers have recognized the American exception to the English common-law rule.

In 4 RCL 566, § 35, it is said:

". . . It may safely be said that the tendency and weight of authority

are in favor of the doctrine that a common carrier is charged with the quasi public duty of transporting on equal terms for all persons, where the carrying for some at a lower price than for others would injure those less favored. It is therefore not permissible for a common carrier to demand a different hire from different persons for an identical kind of service under identical conditions."

In Moore on Carriers, 1st Ed (1906) 122, § 16, it is also stated:

"Independently of the statutes it is unlawful to discriminate in favor of or against any shipper. A majority of the recent cases hold that at common law a carrier cannot justly discriminate in rates between persons in the same circumstances. But the rule does not require that every shipper shall be charged exactly the same rates or allowed the same facilities; it requires that the carrier shall not unreasonably or unjustly discriminate in favor of or against any shipper where the circumstances and conditions are the same."

From 2 Hutchinson on Carriers, 3rd Ed 570, § 521, we quote:

"Mere inequality in charges does not, therefore, of itself amount to an unjust discrimination. It only becomes such when a discrimination is made in the rates charged for transportation of the goods of the same class of different shippers under like circumstances and conditions.

"So a mere reduction from the established rate is not necessarily an unjust discrimination. But it becomes such when it is either intended or has a natural tendency to injure another shipper in his business and destroy his trade by giving to the favored shipper a practical monopoly of the business."

There are many cases showing the development of the American rule requiring competition between the parties before damages may be recovered for discrimination, among which are the following: Vincent v. Chicago & A. R. Co. (1868) 49 Ill 33; Messenger v. Pennsylvania R. Co. (1874) 37 NJL (8 Vroom) 531, 18 Am Rep 754; John Hays & Co. v. Pennsylvania Co. (1882) 12 Fed 309; Scofield v. Lake Shore & M. S. R. Co. (1885) 43 Ohio St 571, 3 NE 907, 54 Am Rep 846; Indianapolis, D. & S. R. Co. v. Ervin (1886) 118 Ill 250, 8 NE 862, 59 Am Rep 369; Menacho v. Ward (1886) 27 Fed 529; Bayles v. Kansas P. R. Co. (1889) 13 Colo 181, 22 Pac 341, 5 LRA 480; Root v. Long Island R. Co. (1889) 114 NY 300, 21 NE 403, 4 LRA 331, 11 Am St Rep 643; Cook v. Chicago, R. I. & P. R. Co. (1890) 81 Iowa 551, 46 NW 1080, 9 LRA 764, 25 Am St Rep 512.

With the advent of railroads the common-law rule was further modified by statutes both in England and in the United States. Such statutes are of two distinct types. One is exemplified by the English Railway Consolidation Act of 1845, and the other by the United States Interstate Commerce Act of 1887, 49 USCA §§ 2 and 8. The English Act, which has influenced legislation in a few jurisdictions in this country, did not require carriers to establish or publish schedules of rates but provided that tolls should be at all times charged equally to all persons for all goods of the same description conveyed over the same railway under the same circumstances. As construed by the English courts this act not only prohibited discrimi-

nation but made the lowest charge the legal rate. "Anything in excess of such lowest rate was extortion, and might be recovered in an action at law as for an overcharge." Pennsylvania R. Co. v. International Coal Min. Co. (1913) 230 US 184, 202, 57 L ed 1446, 33 S Ct 893, 898, Ann Cas 1915A 315; Denaby Main Colliery Co. v. Manchester, S. & L. R. Co. (1885) LR 11 App Cas 97, 116. The Interstate Commerce Act requires carriers to establish and publish schedules of rates, and prohibits discrimination, but it has never been construed as providing that the lowest charge should be the legal rate. Prior to the passage of the Texas statute (Art 1438) the former act had been interpreted by the Supreme Court of the United States as limiting the plaintiff's recovery in discrimination cases to actual loss, and that "before any party can recover under the act, he must show, not merely the wrong of the carrier, but that that wrong has in fact operated to his injury." Parsons v. Chicago & N. W. R. Co. (1897) 167 US 447, 460, 42 L ed 231, 17 S Ct 887, 892. This same interpretation had also theretofore been given the Interstate Commerce Act by the Galveston court of civil appeals in an opinion by Justice Williams in Missouri, K. & T. R. Co. v. Trinity County Lumber Co. (1892) 1 Tex Civ App 553, 556, 21 SW 290, 291, writ denied, wherein it is said:

". . . The same law also prohibits unjust discriminations and the making of unreasonable charges, and appellee contends that the difference between rates allowed carriers and those charged against other shippers constituted an unjust discrimination, which would preclude the recovery of the higher rate. But the law does not provide that an unjust discrimination shall have the effect of limiting the carrier to the lowest rate charged."

In analyzing the decisions involving discrimination in rates which are based upon statutory enactments the distinction in the statutes involved should be kept clearly in mind. For example, respondent relies very strongly upon the case of Union P. R. Co. v. Goodridge (1893) 149 US 680, 37 L ed 896, 13 S Ct 970, 971, which decision is based upon a statute of the state of Colorado. That statute not only prohibited the carrier from charging one person or corporation a greater sum than it charged any other for a like service, but also provided that "all concessions of rates, drawbacks, and contracts for special rates shall be open to and allowed all persons, companies, and corporations alike." It further provided that any railroad corporation which was guilty of violating the provisions of the statute should forfeit to the injured party three times the actual damage sustained or overcharges paid by the party aggrieved. In the Goodridge Case the Supreme Court of the United States determined that the statute made the lowest charge the lawful rate and required that when a lower rate was extended one customer it should be immediately extended to all others in like conditions and similar circumstances. The state of Pennsylvania has had a similar statute which has been similarly construed. Hall v. Pennsylvania R. Co. (1916) 257 Pa 54, 100 Atl 1035, LRA1917F 414. Such statutes as these are patterned after the English Act of 1845 and have by their peculiar language fixed the

measure of damages as indicated. Such an act is not here involved and the Goodridge Case is therefore not controlling.

Article 1438 is as follows:

"It shall be unlawful for any such corporation to discriminate against any person, corporation, firm, association, or place, in the charge for such gas, electric current or power, or in the service rendered under similar and like circumstances."

[4] It will be noted that there is nothing in this article providing a penalty or fixing a measure of damages for discrimination. It is patterned more nearly after the Interstate Commerce Act and must be similarly construed. Like the Interstate Commerce Act it contains no language which may reasonably be interpreted as arbitrarily making the lowest rate the legal rate. It merely declares discrimination to be unlawful and leaves the injured party to the same remedy for damage as existed under our interpretation of the common law. Thus, before one may recover for mere discrimination he must allege and prove his loss as in tort. Notwithstanding this fact, the two courts below have allowed a recovery under Art 1438 for discrimination without either allegation or proof of actual loss. Such courts have erroneously interpreted the statute as though it contained language to the effect that when a corporation violates its provisions such corporation shall be liable to the party discriminated against for the difference between the rates charged him and the lowest rates accorded the favored party. In other words, the same principles which govern damages for an overcharge have been applied herein in a case involving merely discrimination. This, we think, was error.

In the opinion of Justice Cardozo in Interstate Commerce Commission v. United States ex rel. Campbell (1933) 289 US 385, 389, 390, 77 L ed 1273, 1276, 53 S Ct 607, 609, is an exhaustive consideration of the question with which we are now dealing. He very ably distinguishes between discrimination and overcharge. In such opinion he says:

"The Commission does not find, and the complainant does not assert, that the rate was unreasonable in the sense that it would be subject to condemnation if a like rate had been charged to others similarly situated. What is unlawful in the action of the carriers inheres in its discriminatory quality, and not in anything else. When discrimination and that alone is the gist of the offense, the difference between one rate and another is not the measure of the damages suffered by the shipper. Pennsylvania R. Co. v. International Coal Min. Co. (1913) 230 US 184, 57 L ed 1446, 33 S Ct 893, Ann Cas 1915A 315; Mitchell Coal & Coke Co. v. Pennsylvania R. Co. (1913) 230 US 247, 258, 57 L ed 1472, 1476, 33 S Ct 916; Southern P. Co. v. Darnell-Taenzer Lumber Co. 245 US 531, 534, 62 L ed 451, 455, PUR1918B 598, 38 S Ct 186; Keogh v. Chicago & N. W. R. Co. (1922) 260 US 156, 165, 67 L ed 183, 188, 43 S Ct 47. Cf. Postal Teleg.-Cable Co. v. Associated Press, 228 NY 370, 379, 380, PUR1920E 1, 127 NE 256. It is an evidentiary circumstance to be viewed along with others in the setting of the occasion.

It is not the measure without more. . . .

"Overcharge and discrimination have very different consequences, and must be kept distinct in thought. When the rate exacted of a shipper is excessive or unreasonable in and of itself, irrespective of the rate exacted of competitors, there may be recovery of the overcharge without other evidence of loss. 'The carrier ought not to be allowed to retain his illegal profit and the only one who can take it from him is the one that alone was in relation with him, and from whom the carrier took the sum.' Southern P. Co. v. Darnell-Taenzer Lumber Co. *supra*, at p. 534 of 245 US. But a different measure of recovery is applicable 'where a party that has paid only the reasonable rate sues upon a discrimination because some other has paid less.' Southern P. Co. v. Darnell-Taenzer Lumber Co. *supra*. Such a one is not to recover as of course a payment reasonable in amount for a service given and accepted. He is to recover the damages that he has suffered, which may be more than the preference or less (Pennsylvania R. Co. v. International Coal Min. Co. *supra* (at pp. 206, 207 of 230 US), but which, whether more or less, is something to be proved and not presumed. Id. at p. 204 of 230 US. 'Recovery cannot be had unless it is shown that as a result of defendants' acts, damages in some amount susceptible of expression in figures resulted.' Keogh v. Chicago & N. W. R. Co. *supra*, at p. 165 of 260 US, 43 S Ct at p. 50. The question is not how much better off the complainant would be today if it had paid a lower rate. The question is how much worse off it is because others have paid less."

In a somewhat earlier opinion of the Supreme Court of the United States in Pennsylvania R. Co. v. International Coal Min. Co. (1913) 230 US 184, 197, 202, 206, 57 L ed 1446, 1451, 1453, 1455, 33 S Ct 893, Ann Cas 1915A 315, Justice Lamar discusses and defines the correct measure of damages in a case of this sort, as follows:

"But although this suit was brought to enforce a cause of action given by this section to any person injured, it is a noticeable fact that in its pleading the plaintiff does not claim to have been damaged and there is neither allegation nor proof that it suffered any injury. It contends, however, that this was not necessary, for the reason that, as matter of law, it was entitled to recover as damages the same rate per ton on all plaintiff's shipments as had been rebated any other person, on any of his tonnage, shipped at the same time, over the same route.

. . . . . .

"Having paid only the lawful rate, plaintiff was not overcharged, though the favored shipper was illegally undercharged. For that violation of law, the carrier was subject to the payment of a fine to the government, and, in addition, was liable for all damages it thereby occasioned, the plaintiff or any other shipper. But under § 8, it was only liable for damages. Making an illegal undercharge to one shipper did not license the carrier to make a similar undercharge to other shippers, and if having paid a rebate of 25 cents a ton to one customer, the carrier, in order to escape this suit, had made a similar undercharge or rebate to the plain-

tiff, it would have been criminally liable, even though it may have been done in order to equalize the two companies. For, under the statute, it was not liable to the plaintiff for the amount of the rebate paid on contract coal, but only for the damages such illegal payment caused the plaintiff. The measure of damages was the pecuniary loss inflicted on the plaintiff as the result of the rebate paid. Those damages might be the same as the rebate, or less than the rebate, or many times greater than the rebate; but unless they were proved, they could not be recovered.

. . . . .

"To adopt such a rule and arbitrarily measure damages by rebates would create a legalized but endless chain of departures from the tariff; would extend the effect of the original crime; would destroy the equality and certainty of rates, and, contrary to the statute, would make the carrier liable for damages beyond those inflicted, and to persons not injured."

The cases of Texas Power & Light Co. v. Hilltop Baking Co. (Tex Civ App 1935) 78 SW2d 718, and Texas Power & Light Co. v. Doering Hotel (Co. (1942) 139 Tex 351, 45 PUR (NS) 404, 162 SW2d 938, are cited by respondent as authority for the recovery herein but they are not controlling of this case. From the opinion in the Hilltop Case it appears that the plaintiff therein was entitled to the rate extended to others, not because it had been extended as a discriminatory favor to others, but because it was the rate applicable to plaintiff's business. Such facts amount to more than mere discrimination. They constitute an overcharge where the measure of damages may be the amount of the overcharge. In the Doering Case the measure of damages was not questioned or presented to this court in the application for the writ of error. All points considered in that case related to questions of whether there had been any discrimination and to certain procedural matters alleged to be error in determining the issue of discrimination. The measure of damages was not in issue in this court.

However, the exact question now before us was decided adversely to respondent by this court in Kousal v. Texas Power & Light Co. (1944) 142 Tex 451, 53 PUR(NS) 308, 315, 179 SW2d 283, 287. In that case, as in this, there was an undercharge, rather than an overcharge, from the established rate. The Kousals, who were the disfavored parties, sued for the difference in the rates charged them and the lowest rates charged other customers. It was there held that to approve such an arbitrary measure of damages "would create a legalized but endless chain of departures" from the fixed rate. It was further said:

"Therefore, we are constrained to hold that, although the case made by the Kousals does show unlawful discrimination and preference by the utility of other similarly situated customers, it does not show that the Kousals were charged more than the rate approved and agreed to by the duly constituted governmental agency, hence that they failed to establish a cause of action for overcharge."

It is true the rate paid in the Kousal Case was fixed by a governmental rate-making body but we think this fact is immaterial. The measure of damages in a suit for discrimination is the

same whether the rate was made by a governmental rate-making body or by the utility itself. Both such rates are authorized by law and whether they are made by one agency or another is not important. Both rates are public rates in the sense that they originate under and by virtue of public authority from the same source—the legislature. A deviation from a rate established by either agency would provoke the same mischief and result in the same loss. In no case cited by the parties, nor in any we have found, has any distinction been made in the measure of damages for discrimination because of the source of the rate applied. Many of the cases dealing with this question are based upon rates fixed by the defendant. In fact, four of the cases cited in the Kousal Case were cases where the rates involved were established by the utility companies indiscriminately. Cock v. Marshall Gas Co. (Tex Civ App 1920) 226 SW 464; Seaberg v. Raton Pub. Service Co. (1939) 43 NM 161, 87 P2d 676; Boerth v. Detroit City Gas Co. (1908) 152 Mich 654, 116 NW 628, 18 LRA(NS) 1197; Postal Teleg.-Cable Co. v. Associated Press, 228 NY 370, PUR1920E 1, 127 NE 256. The opinion in the Associated Press Case cited was written by Justice Cardozo, the same eminent jurist who wrote that in the Interstate Commerce Commission v. United States ex rel. Campbell (1933) 289 US 385, 77 L ed 1273, 53 S Ct 607. In the former the rate was fixed by contract between the parties, as in this case, while in the latter the rates were initially fixed by the carrier but approved by the Interstate Commerce Commission; yet in each case Justice Cardozo announced identical rules as to the measure of damages. We can conceive of no good reason why the same principle should not obtain in all cases of discrimination irrespective of the source or author of the rate.

[5] From what has been said it follows that the respondent has failed to allege or prove a cause of action either for overcharge or discrimination. However, since the cause has been tried upon an erroneous theory we think justice will best be subserved by remanding the cause rather than rendering judgment for petitioner.

The judgments of both courts below are reversed and the cause is remanded to the trial court.

Opinion adopted by the Supreme Court.

MARYLAND PUBLIC SERVICE COMMISSION

MARYLAND PUBLIC SERVICE COMMISSION

Re Consolidated Gas Electric Light & Power Company of Baltimore

Case No. 4661

Mayor and City Council of Baltimore

v.

Consolidated Gas Electric Light & Power Company of Baltimore

Case No. 4648
Order No. 41554
November 23, 1945; November 30, 1945

INVESTIGATION *of complaints against electric rates; present rates upheld. Several incorrect figures, inadvertently used in opinion, corrected by memorandum opinion and order dated November 30, 1945.*

Valuation, § 48 — Rate base determination — Earlier valuation with adjustments — Original cost.

1. Findings of value resulting from a thorough investigation at a time when relevant information pertaining to the preregulation period was in closer perspective than now, and again after a lapse of years of regulation, should not be disturbed without a showing of failure to consider essential evidences of value or undue dependence upon improperly included evidence; and a rate base so established in conformity with state law should be brought up to date by adding net additions of property at cost and deducting the increase in depreciation reserve, instead of adopting as the rate base the cost to the party who first employed the property in public service, p. 99.

Valuation, § 296 —Working capital — Relation to operating expense.

2. The practice of the Commission in allowing as cash working capital an amount equal to one-eighth of operating expenses of the previous year was followed notwithstanding contentions for different amounts, p. 99.

Valuation, § 104 — Accrued depreciation — Reserve as evidence.

3. A depreciation reserve not exceeding the reserve requirement should be accepted as the best evidence of accrued depreciation, p. 99.

Rates, § 197 — Unit for rate making — Gas and electric services.

4. The past practice of determining a rate base for combined gas and electric services and allowing a fair return on that base should be continued when complainants against this practice are not being subjected to unreasonable discrimination and electric rates are just and reasonable without such reduction as might be accomplished by increasing rates for other services, and where the company is operated as an integrated operating unit, p. 100.

Return, § 71 — Reasonableness as a whole — Separate departments — Maintenance of credit.

5. A company operating electric, gas, and heating departments as an integrated utility must be permitted to earn a return from its entire business sufficient to assure investors of its financial soundness and to maintain its credit and enable it to obtain money at reasonable cost when needed for the proper discharge of its public duties, p. 100.

Rates, § 197 — Unit for rate making — Electric and steam-heating businesses.

6. A steam-heating business established for the primary purpose of replacing private steam plants, which were being used for generating of electricity as well as for heating, and which has been a contributing factor in increasing the electric load, should be treated as an adjunct of the company's electric service for rate-making purposes, p. 100.

Valuation, § 250 — Customer contributions.

7. Customer contributions toward utility construction should be excluded from the rate base, p. 101.

Depreciation, § 51 — Electric property.

8. A depreciation rate of 3 per cent was approved as the annual accrual of depreciation in electric property, p. 102.

Return, § 83 — Combined utility.

9. Rates producing a return of not less than 5½ per cent and not more than 6 per cent for a company operating electric, gas, and heating departments were held to be reasonable, p. 102.

Rates, § 303 — Fuel adjustment clause — Industrial service.

10. Continuation of a fuel rate adjustment clause for service to industrial users of electricity was approved, although it was recognized that a variation in the cost of fuel affects the cost of serving all classes of customers and should be shared by all in proportion to the use of the service and that the use of a device which necessarily overburdens a particular class should be minimized, p. 103.

Accounting, § 44 — Periodic reports — Separate departments of utility.

11. Accounting and periodic reports to the Commission should adequately disclose, separately, the cost of operation and the property employed in rendering gas, electric, steam-heating, and merchandising services, p. 104.

Apportionment, § 6 — Utility department — Revenue basis.

12. A public utility company's practice of making allocations between gas, electric, steam-heating, and merchandising services on a revenue basis was held to be more practicable than others methods, and sufficiently accurate, p. 104.

APPEARANCES: Philip H. Dorsey, Jr., People's Counsel; Simon E. Sobeloff and Thomas J. Tingley, for the mayor and city counsel of Baltimore; John Henry Lewin, for Rustless Iron and Steel Corporation; Charles C. G. Evans, for Bethlehem-Fairfield Shipyard, Inc.; M. William Adelson, for the County Commissioners of Baltimore County; George A. Finch, for various taxpayers; Edwin M. Sturtevant, and Clarence W. Miles, for Consolidated Gas Electric Light and Power Company of Baltimore.

By the COMMISSION: The proceeding in Case No. 4661 arose out of a request by people's counsel that the Commission have an investigation made of the earnings of the Utility, preparatory to conducting informal negotiations for reduction of electric rates. This request was filed on January 7, 1944.

The mayor and city counsel of Baltimore, on February 10, 1944, filed a complaint against the rates charged the city under three contracts, viz:

(a) The operation and maintenance of the electric street lighting system.

(b) The supply of current for certain public buildings, squares, streets, alleys, under "Municipal Flat Rate Schedule."

(c) The supply of illuminating gas for all street lamps and in public buildings.

It was alleged that the total overcharge on these contracts amounted to $615,822 per annum, of which $58,450 was for gas.

This complaint was docketed as Case No. 4648 and, on April 5, 1944, a petition to intervene therein was filed in the names of three taxpayers and was granted.

The Commission's staff completed its investigation prior to May 23, 1944, and on that date the mayor and city council of Baltimore and the people's counsel asked that a formal proceeding be instituted. The matter was, therefore, docketed as Case No. 4661 and was set for hearing on June 6, 1944.

Rustless Iron and Steel Corporation, Bethlehem-Fairfield Shipyard, Incorporated, the County Commissioners of Baltimore County, and the Office of Price Administration intervened.

The two cases were consolidated for the purpose of hearing and, after people's counsel had occupied seven days in presenting testimony and exhibits relative to the investigation by the Commission's staff, the hearing was adjourned to allow the company time to prepare its defense.

People's counsel contended (a) that the rate base which the Commission contemplated using for informal negotiations, obtained by adding net additions to the rate base determined by the Commission as of December 31, 1922, and deducting therefrom the increase in the depreciation reserve, was in excess of the depreciated original cost of the property and that recent decisions of the United States Supreme Court, particularly in Federal Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 88 L ed 333, 51 PUR(NS) 193, 64 S Ct 281, had made original cost the proper basis upon which to establish the rate of return;

(b) that the amounts paid by the defendant to the Safe Harbor Water Power Corporation and to Pennsyl-

vania Water and Power Company for energy were excessive;

(c) that the company's accounting practices relating to the amortization of wartime facilities and to merchandising were not in conformity with the requirements of the uniform system of accounts.

People's counsel offered a motion that the Commission request the Federal Power Commission to determine the reasonable charges to be paid to the Safe Harbor Corporation and Pennsylvania Water and Power Company, and in consideration of the interstate nature of the purchases from said sources the Commission granted the motion and the Federal Power Commission is now engaged in such determination.

Rustless Iron and Steel Corporation contended that the Commission's past practice of allowing the utility a fair return from the combined gas and electric services was unfair to the electric customers since the present electric rates are producing a higher return than the present gas rates and that separate rate bases should be determined for gas and for electric service and rates should be established for electric service which will be only sufficient to yield a fair return upon the original cost of the property which is allocable to the electric service.

Historical

The Consolidated Gas Electric Light and Power Company of Baltimore is the successor and sole survivor of The Gas Light Company of Baltimore which was incorporated in the year 1816 and several electric utilities of which the oldest was incorporated in 1881. These corporations went through a process of merger and consolidation which culminated in the formation of the present company on June 20, 1906; just four years prior to the establishment of this Commission.

One of the first undertakings of the Commission was the fixing of rates for the gas and electric services of Consolidated Gas Electric Light and Power Company of Baltimore and this was accomplished by Order No. 1037, dated January 13, 1913, making the established rates effective on July 1st of that year. A very thorough investigation was made at that time for the purpose of determining a rate base, including estimates by expert engineers of cost to reproduce the property and of accrued depreciation. The Commission found from consideration of the several estimates of cost to reproduce the property that the indicated depreciated value, on that basis, as of June 30, 1912, was $26,417,414, which included $5,000,000 for easements. The Commission did not accept the amount so found as a rate base, and said of such estimates "They have a value as checks upon the information derived from other sources, but it is safe to say that in large and complicated matters, such as we are dealing with here, conclusions based upon the findings of contending expert appraisers alone would be little better than a guess at the true value of a given property. In this case we have extreme views upon both sides, each, no doubt, honestly arrived at and both, certainly, adroitly maintained."

The capitalization of the company, as of the same date, was found to be:

Outstanding bonds and other obligations	$29,358,000
Outstanding preferred and common stock	14,160,088
Total	$43,518,088

Fixed charges were $1,651,063, which with an allowance of $500,000 for depreciation and $150,000 for contingencies produced a total of $2,301,063, which it was estimated the company needed in addition to the amount of operating expenses. This requirement equated to 8.7 per cent of the value indicated by reproduction estimates and 7.9 per cent of the par value of outstanding bonds.

Rates were fixed at 80 cents, net, per thousand cubic feet, for gas and a primary rate of 8½ cents per kilowatt-hour for electricity, which were estimated to produce $537,601 in excess of minimum requirements. This excess was found to be about two-thirds of the amount required to pay dividends on both kinds of stock or to provide a reasonable addition to surplus if no dividends were paid on the common stock.

In reaching its conclusions, the Commission reviewed the effect of the several consolidations by which the Consolidated Gas Electric Light and Power Company had eliminated competition, and noted that these consolidations resulted in an increase of $9,850,638 in the par value of outstanding securities. The Commission said: "The nature of the case necessitated a searching inquiry into the affairs of the company." The public hearings consumed forty-four days and three days were given to argument. There were 4,819 pages of testimony and 129 exhibits.

The Commission again made a thorough investigation of the affairs of the company in the year 1923, after the company had made application for an increase in gas rates. All phases of the company's operations were considered and a total reduction of annual revenue was ordered in the amount of $1,350,000. Revenue from gas service was reduced $650,000. Revenue from electric domestic service was reduced $350,000 and adjustment of the fuel clause effected a reduction of $350,000 in revenue from electric power sales.

There were nearly 6,000 pages of testimony, several hundred exhibits and 500 printed pages of briefs. Much of the record related to the determination of reproduction cost and the Commission said: "It is unfortunate that this elaborate and expensive effort should have been of such little help to the Commission in its task of finding the present fair value of the company's property now used and useful in the public service." "There were five estimates of value presented to the Commission. We have given careful consideration to every item of each. As stated, we cannot adopt the company's reproduction cost-new appraisal as the rate base." "From a long experience with the company, and from a study and consideration of the entire testimony, we are convinced that the security issues now outstanding represent par value in property. . . ." The Commission found the fair value of the company's property as of December 31, 1922, to be $81,400,000, and allowed a return of between 7 per cent and 8 per cent upon that base. This finding of value was confirmed and used in the year 1926, in a review of the rates at that time, and was used

again in 1929 in deriving the amount of $111,345,046 as the rate base at December 31, 1928. It has been used, also, in all informal proceedings relating to rate adjustments up to the present time.

[1] The findings of value resulting from such a thorough investigation at a time when relevant information pertaining to the preregulation period was in much closer perspective than now, and again after a lapse of ten years of regulation should not be disturbed without a showing of failure to consider essential evidences of value or undue dependence upon improperly included evidence.

It is urged that when the rate base was last determined for this company, the Commission was controlled by the doctrine of Smyth v. Ames (1898) 169 US 466, 42 L ed 819, 18 S Ct 418, which required consideration of the cost to reproduce the property and that this requirement has now been set aside and the Commission should adopt as the rate base the cost to the party who first employed the property in public service. The company, on the other hand, relies upon the Maryland statute which mentions only "fair value" and insists that infers present value which fluctuates with market prices.

The statute by which this Commission was created expressly provides that "Every such valuation shall be so made and ascertained by the Commission that as far as possible it shall not disturb the value of bonds of said corporation issued prior to April 5, 1910." This requirement determined the rates in 1912 and after an exhaustive investigation ten years later the Commission found " . . . the security issues now outstanding represent par value in property. . . ." While the statute is mute regarding bonds issued subsequent to April 5, 1910, it is a fact that all securities issued since that date have been approved by the Commission and as the legislature protected bonds which were issued prior to regulation, the Commission seems to have acted reasonably and in conformity with the spirit of the Maryland law when, in 1923, it found that the outstanding securities represented par value in property. It appears, therefore, that the rate base established in 1923 was determined in conformity with the Maryland law and we believe that the Commission's practice since that time of bringing the rate base up to date by adding to the 1923 base the net additions of property, at cost, and deducting the increase in the depreciation reserve is a proper one and should be continued.

[2] It has been customary for the Commission to allow as cash working capital an amount equal to one-eighth of the operating expenses of the previous year. In the instant case, people's counsel contended for a lesser allowance and the company submitted a study to show that a somewhat greater amount is required. The Commission believes that its previous practice is equitable and will follow it. Such allowance based upon the operation of 1944, amounts to $3,974,920.

[3] *Accrued Depreciation.* This company, until 1937, practiced what is known as retirement accounting in which the reserve is intended to be only sufficient to provide for retirements of property and may at times be practically exhausted by such retirements. The present system of ac-

counting for depreciation of the property in use requires a determination of the annual rate of depreciation and annual accruals to the reserve are made at that rate. Such accounting when applied to a property from the beginning of its use should produce a reserve which would, at any time, indicate the amount of accrued depreciation in the property still in service, but it is argued that the reserve of this company is necessarily less than the accrued depreciation and that a greater amount should be deducted to find the depreciated rate base. At the same time, the company has been criticized for crediting to the reserve certain tax savings which resulted from the wartime accelerated amortization of the Riverside power plant. The total of these additions to the reserve amounts to $2,210,480 as of December 31, 1944. Since the testimony indicates that the depreciation reserve, including the disputed additions, does not exceed the "reserve requirement," the reserve as stated will be accepted as the best evidence of accrued depreciation. The amount of the reserve at December 31, 1944, was $35,555,519, and the increase since December 31, 1922, was $30,919,059.

[4–6] As heretofore stated, it has been the practice of the Commission in the regulation of this utility to determine a rate base for the combined gas and electric services. A fair return was allowed on that base and equitable rates for the several classes of gas and electric services were fixed to produce the allowed return. The Commission proposed to continue this practice in the instant case and people's counsel and counsel for the mayor and city council of Baltimore were in accord with the Commission, though it was shown that a lesser rate of return was being earned from the present gas rates than from present electric rates and there would be a better prospect for a reduction of electric rates if property used in common were apportioned between the two services and a separate rate base were found for each. It seemed apparent that such procedure would show justification for an increase in gas rates and the company filed schedules or increased gas rates conditioned upon a reduction of electric rates resulting from segregation of rate bases. Counsel for Rustless Iron and Steel Corporation and for Bethlehem-Fairfield Shipyard, Incorporated, who were joined by counsel for three taxpayers, contended for separate findings for the electric service. After consideration of briefs and arguments, the Commission announced its opinion that the property of the company should be considered as a whole in determining a fair return and therefore the Commission would not consider any further evidence with respect to the allocation of property to particular classes of service. Having given the matter thorough consideration, in the light of all present conditions, we find that one rate base should be used for the combined services.

The Commission made its interlocutory ruling after carefully weighing the evidence which had been presented, in the light of the contentions of counsel and the Commission's knowledge of the company's service during more than thirty years of regulation. In confirming that ruling now we find that the intervening complainants are not being subjected to any unreasonable discrimination and that the elec-

tric rates are just and reasonable without such reduction as might be accomplished by increasing the rates for the gas and steam heating services.

Gas and electricity are distributed by the company throughout the city of Baltimore and its suburbs to substantially the same group of domestic and commercial customers. Gas is used principally for cooking and heating. To the extent that both services are used by a customer, the good effect to that customer of a reduction in electric rates would be offset by an increase in gas rates.

The company is an integrated operating unit, and the substantial economies resulting from the operation of the several services by the one organization are beneficial to all customers.

The company must be permitted to earn a return from its entire business sufficient to assure investors of its financial soundness and to maintain its credit and enable it to obtain money at reasonable cost when needed for the proper discharge of its public duties.

The steam heating business, established for the primary purpose of replacing private steam plants which were being used for generation of electricity as well as for heating, has been a contributing factor in increasing the electric load and we believe it should be treated as an adjunct of the company's electric service.

[7] *Customers' Contributions.* There is, naturally, a limit to the amount which the company can invest to attach a certain class of customer without imposing an undue burden on the service as a whole, and a customer who requires more than that limit is required to pay the excess. These excess payments or customer investments aggregate, at the present time, $903,136. The property so created is included with other fixed capital which is subject to depreciation accrual and the cost of its maintenance is charged to operating expense. The company contends that it is entitled to a return on the amount of these customer investments in addition to all costs of operation and maintenance That would treat the amount as an investment by the company instead of by customers and would burden the service to the full extent of a company investment and there would be no justification for the requirement of such contributions. We think it is quite apparent that the amount of these customer contributions should be excluded from the rate base.

The derivation of the rate base, as of December 31, 1944, in conformity with the above discussion, is as follows:

Commission's Fair Value at December 31, 1922	$81,400,000
Allowance for Working Capital, Including Materials and Supplies	6,375,000
	$75,025,000
Net Additions to December 31, 1944	96,223,974
	$171,248,974
Contributions in Aid of Construction	903,136
	$170,345,838
Increase in Depreciation Reserve to December 31, 1944	30,919,059
	$139,426,779
Allowance for Materials and Supplies	4,967,998
Allowance for Cash Working Capital	3,981,366
Rate Base at December 31, 1944	$148,376,143

Company Indebtedness at December 31, 1944

Item	Amount	Interest	Dividends
Bonds—			
(Including $7,500 owed Town of Laurel)	$70,399.500	$2,380,941	
Preferred Stock	29,184,900		$1,278,917
Common Stock	39,414,813		4,202,629 (3.60/shr.)
Totals	$138,999,213	$2,380,941	$5,481,546

[8] *Operating Income.* A disputed item of operating expense is the rate used for annual accrual of depreciation in electric property. The company is now using 3¼ per cent and people's counsel contended that analysis of the reserve over a period of years showed that a rate of 3.0 per cent is adequate. The Commission has considered the testimony and exhibits pertaining to the derivation of the percentage rates used for annual accrual and is of the opinion that 3.0 per cent should be used for electric property instead of 3¼ per cent. The company has not made studies to determine the service lives of the several classes of property as is contemplated in connection with the continuing inventory and its over-all rates are subject to that infirmity.

Total operating income for the year ending December 31, 1944, giving effect to a merchandizing loss of $63,840, amounted to $8,265,010.

It is very difficult to estimate from the information at hand what the operating income will be for the year 1946. People's counsel estimated that the loss to be expected of industrial load will be offset by increases in other classes of service. We believe it is reasonable, for the purposes of this case, to assume that there will be no substantial change in operating income during the year 1946.

[9] *Return.* There was very full testimony, well supported by exhibits, on the rate of return which should be allowed this company and the Commission has carefully considered it. We find that a return of not less than 5½ per cent and not more than 6 per cent would be reasonable and these rates applied to the rate base of $148,172,126 would produce $8,149,467 and $8,890,328, respectively. Since the return earned in 1944 lies between these limits, we find that the present rates are reasonable and that no reduction in electric rates is justified at this time. If a reduction in cost of purchased power should result from the proceedings now being conducted

by the Federal Power Commission, the electric rates should be reduced in the amount of such saving.

Street Lighting Rates. It has been pointed out before by this Commission that it is very difficult to equitably allocate to a particular class of service a pro rata of the many costs which are incurred in rendering the service as a whole and only persons who are thoroughly familiar with all details of the elements of property employed and the various phases of operation could hope to arrive at a dependable result. The city of Baltimore in its contention for lower rates for street lighting recognized this difficulty and was content to make comparisons with the rates charged domestic customers by this company and with rates charged in other cities of comparable size for what was understood to be similar service. The three taxpayers who intervened in the case employed an expert who submitted an allocation of costs to street lighting, but he complained of the inadequacy of the data available to him and expressed doubt as to the dependability of some of his results. The company submitted a cost study in considerable detail, illustrated by an exhibit which was the subject of lengthy discussion and criticism, which study indicated that the return realized from the street lighting rates was 4.3 per cent of what was estimated to be the rate base for that service. Without passing upon the degree of accuracy attained in that study, we find that it furnished the best evidence on the subject and indicated that present rates for street lighting do not produce more than a reasonable proportion of present income.

[10] *Industrial Rates.* Rustless Iron and Steel Corporation and Bethlehem-Fairfield Shipyard, Incorporated, customers served under electric Schedule IT, offered testimony to show that cost to them of service under that schedule was excessive. Particular stress was laid upon the tail rate of the schedule and upon the fuel adjustment clause. We find that the present IT Schedule is in reasonable relationship to present rates for other classes of service. We do not find that the fuel rate adjustment clause should be changed at this time and we recognize the convenience with which it can be applied to the industrial and larger commercial customers and the ability of such customers to recoup increased costs in the selling price of their product, but we realize that a variation in the cost of fuel affects the cost of serving all classes of customers and should be shared by all in proportion to the use of the service. This equitable distribution of cost can be accomplished only by a general increase of rates or a surcharge. When rates have been fixed for all classes of service with due consideration for equitable relationship between classes, such relationship cannot be maintained if one class be required to bear the entire burden of an increase in cost which affects the service of all classes. This being true, the use of a device which necessarily overburdens a particular class should be minimized, as it will destroy the equitable relationship which has been fixed at the time of the general rate review. Therefore, when a fuel adjustment clause is employed and of necessity made applicable only to a certain class of service, a relatively permanent or continuing increased

cost of fuel, of substantial amount above the base price, should be accounted for by some means of distributing the increase generally and the current price of the fuel should then become the base for application of the fuel clause adjustment. This is a subject which seems to require further study by the company and by the Commission.

[11, 12] The record in this case occupied 5,116 pages, there were 195 exhibits and the Commission had the advantage of well-prepared briefs and four days of argument. A considerable portion of the testimony related to methods of accounting and it was claimed that certain costs were not properly reported to the Commission by the company in conformity with the requirements of the prescribed system of accounts. It is the intention of the Commission that the accounting and the periodic reports to the Commission shall adequately disclose, separately, the cost of operation and the property employed in rendering gas, electric, steam heating, and merchandizing services. This requires an apportionment of property which is used in common and, after due consideration of the testimony and exhibits relating to different methods of making such apportionment, we find that the company's practice of making such allocations on a revenue basis is the more practicable and is sufficiently accurate.

An order will be prepared in conformity with the findings herein.

ORDER

In accordance with the opinion of the Commission filed herein, on the date hereof, which opinion is hereby referred to and made a part hereof,

It is, this 23rd day of November, in the year 1945, by the Public Service Commission of Maryland,

Ordered: (1) That the fair value for rate-making purposes of the property of Consolidated Gas Electric Light and Power Company of Baltimore on December 31, 1944, was $148,172,126, and such valuation shall be and become final unless protest against the same shall be filed with the Commission within ten days, as provided by § 30 of the Public Service Commission Law.

(2) That the investigation of the rates of Consolidated Gas Electric Light and Power Company of Baltimore in Case No. 4661 be, and the same is hereby, dismissed.

(3) That the complaint of the mayor and city council of Baltimore in Case No. 4648 and intervening petitions therein, be, and the same are hereby, dismissed.

(4) That this order shall become effective on the date hereof and shall remain in effect until the further order of the Commission in the premises.

(5) That the said Consolidated Gas Electric Light and Power Company of Baltimore shall furnish this Commission accurate and complete statements in convenient form, setting forth the revenues and expenses of the said company during each quarterly period; such reports to be furnished as soon as may be reasonably practicable and convenient after the end of each quarterly period during the period this order remains effective.

(6) That a copy of this order and a copy of the opinion hereinbefore referred to and filed herewith be served

upon the said Consolidated Gas Electric Light and Power Company of Baltimore, and that the said company within ten days of the date of service of such copy shall notify the Commission in writing whether or not it will accept and abide by the same.

SUPPLEMENTAL ORDER

In accordance with memorandum of the Commission filed herein on the date hereof, which memorandum is hereby referred to and made a part hereof,

It is, this 30th day of November, in the year 1945, by the Public Service Commission of Maryland,

Ordered: (1) That the fair value for rate-making purposes of the property of Consolidated Gas Electric Light and Power Company of Baltimore on December 31, 1944, was $148,376,143, and such valuation shall be and become final unless protest against the same shall be filed with the Commission within ten days, as provided by § 30 of the Public Service Commission Law.

(2) That a copy of this order and a copy of the memorandum hereinbefore referred to and filed herewith be served upon the said Consolidated Gas Electric Light and Power Company of Baltimore, and that the said company within ten days of the date of service of such copy shall notify the Commission in writing whether or not it will accept and abide by Order No. 41554 entered on November 23, 1945 (printed herewith) as modified, amended, and changed by this order.

(3) That except as modified, amended, and changed by (1) above, Order No. 41554, entered herein on November 23, 1945, shall be and remain in full force and effect.

MINNESOTA RAILROAD AND WAREHOUSE COMMISSION

Re Chicago & Northwestern Railway Company

A-6671
August 8, 1945

APPLICATION *for authority to discontinue railroad station agency service and to substitute custodian service; authority to be granted unless revenues have increased substantially by end of current year.*

Service, § 267 — Discontinuance — Station agency.

Authority to discontinue agency service at a railroad station and to substitute custodian service therefor will be granted, unless the gross income derived from outgoing and incoming traffic by the end of the current year amounts to the statutory requirement of $8,000 at said station, where the population served by said station is small, where the area has reasonably

adequate common carrier truck and bus service in addition to truck service rendered by wholesale firms doing business there and where there will be no reduction in the number of passenger or freight trains.

Service, § 267 — Abandonment of railroad station — Legality of order.

Statement, in dissenting opinion, that order authorizing abandonment of railroad station agency and substitution of custodian service therefor is unlawful because not based exclusively upon the record, but made contingent upon future conditions which may or may not occur, p. 107.

Service, § 267 — Abandonment of railroad station — Inadequacy of revenue — Applicability of statute.

Statement, in dissenting opinion, that order authorizing abandonment of railroad station unless annual revenues amount to at least $8,000 annually, establishes a dangerous precedent because the germane statute does not provide that when annual business at a station amounts to less than $8,000 the agent shall be removed, such precedent being particularly dangerous where abnormal war conditions are construed to be sufficient grounds for replacing the station agency with custodian service, thereby making abnormal conditions more acute, p. 107.

Revenues, § 2 — Future estimates — Postwar revenues.

Statement, in dissenting opinion, that an allowance of only five months to get annual business at a railroad station agency back to normal is unfair because, while an increase in revenue at an early date is sure, state and Federal reports alike disclose uncertainty in the corn crop for the year involved and the possibility of government limitation on corn during such year, corn being one of the principal commodities handled at the station, p. 108.

(CHASE, Commissioner, dissents.)

By the COMMISSION: The above-entitled matter came on for hearing before the Commission at Cobden, Minnesota, on Monday, April 2, 1945, on petition of the Chicago and Northwestern Railway Company.

Commissioner Ray P. Chase presided.

There appeared for petitioner George E. Dames and Gerald F. Firstensky, Attorneys, St. Paul, and for objector, H. H. Flor, Attorney, New Ulm, and the record having been submitted to the entire Commission and duly considered with the law applicable thereto and the Commission being fully advised hereby makes and files the following order:

Findings of Fact

1. That proper notice was duly posted at the station of the applicant at Cobden, Minnesota.

2. That the gross earnings at said station from incoming and outgoing traffic for the 4-year period ending December 31, 1944, was as follows:

Year	Gross Freight Service Revenue	Gross Passenger & Miscellaneous Revenue	Total Gross Revenue
1941	$6,735.00	$954.29	$7,689.29
1942	7,880.84	2,180.48	10,061.32
1943	8,743.39	3,050.04	11,793.43
1944	3,432.06	1,583.52	5,015.58

3. That the direct expense incurred in the operation of the facilities at Cobden for the same period was as follows:

1941	$1866.26
1942	2084.98
1943	2956.64
1944	2351.22

4. That the population of Cobden is about 115, and the businesses located thereat are the Eagle Roller Mill Grain Elevator, Cobden Livestock Shipping Association, Peterson Service Station, Arnold Wheeler Liquor Store, American Cash Grocery, Manderfeld's Beer Parlor, and the Zieske Grocery Company, which was recently destroyed by fire. That Cobden is on U. S. Highway No. 14 and has reasonably adequate common carrier truck and bus service in addition to truck service rendered by wholesale firms doing business there.

5. That the decrease in gross revenue in 1944 was largely due to Federal Regulations invoked because of the existing war, less than average grain crops, and a decrease in hog production.

6. That if the application of the petitioner were granted consignees will be notified by the agent at Sleepy Eye or by the custodian upon the arrival of freight, and agency service will be available to the patrons of the railroad at Sleepy Eye, a distance of 5.2 miles east and at Springfield, a distance of 7.3 miles west of Cobden. That whenever cars are needed for shipments in carload lots the same may be obtained by notifying the agent at Sleepy Eye. No toll charge is made for calls to Sleepy Eye.

7. That there will be no reduction in the number of passenger or freight trains; that the possibility of increasing the gross revenue is speculative and conjectural, and the abandonment of agency service and substitution of custodian service will not impair petitioner's ability to serve the public fully and satisfactorily nor create an undue burden upon public convenience and necessity at said point.

CHASE, Commissioner, dissents for the following reasons:

1. The order is unlawful.

2. The order is a dangerous precedent.

3. The findings of fact are untrue.

4. Allowance of only five months to get business back to normal is unfair.

5. Removal of the agent is against public interest.

6. Discontinuance of agency service will harm the railroad.

7. Return of veterans has solved man-power shortage.

I

The order is unlawful because it is not based exclusively upon the record, but is made contingent upon future conditions, which may or may not occur.

II

The order is a dangerous precedent because § 219.85, Minnesota Statutes 1941, does not provide that when annual business at a station amounts to less than $8,000 the agent shall be removed, and this order does so provide. The majority are on dangerous ground when they disregard the statute and establish a precedent where abnormal war conditions are construed to be sufficient grounds for replacing the services of an agent with those of a

custodian, thereby making abnormal conditions more acute.

III

The findings of fact are untrue; for example, the statement in § 7 thereof: "That the possibility of increasing the gross revenue is speculative and conjectural." There is nothing speculative or conjectural about an increase in revenues at the Cobden station. An increase is a certainty.

Cobden is a village of 136 inhabitants, located in Brown county. In all the history of Minnesota there never has been a crop failure in Brown county. The Cobden trade territory reaches over into Redwood county and these two counties form part of one of the richest agricultural sections in the northwest. State records show that in 1944 swine, including pigs, in Brown county numbered 115,000, in Redwood county 175,000; that in 1944 Brown county produced 5,193,500 bushels of corn, Redwood county 7,564,200 bushels.

The decrease in annual business at the Cobden station is due to the war. Farmers have been unable to buy farm machinery, building material, household goods, automobiles, trucks, tires, batteries, and hundreds of other needed articles. Since these articles could not be bought, they could not be shipped. For weeks it was not possible to secure box cars to ship grain. For weeks an embargo on hogs made it impossible to ship hogs by rail. War prices on corn caused farmers to breed fewer sows and raise fewer pigs. The result was a decreased annual business at the Cobden station.

Now the war with Germany is ended, Japan is doomed to early defeat, and economic conditions in the United States again will be normal. In view of the productive capacity of Brown and Redwood counties to say "that the possibility of increasing the gross revenue is speculative and conjectural" as applied to Cobden is inexcusable nonsense.

Yet the majority list it as a finding of fact.

IV

Allowance of five months only to get the annual business at the Cobden station back to normal is unfair because, while an increase in revenue at an early date is sure, state and Federal reports alike disclose uncertainty in the 1945 corn crop and the possibility of government limitation on corn this fall.

V

Removal of the agent is against public interest because a custodian does not and cannot give the service which an agent gives. He is not paid to give such service and is not expected to give it. Early return of America to normal economic conditions requires coöperative effort by industry, agriculture, labor, and utilities. Further hampering of a municipality already handicapped by war is a definite disservice.

VI

Discontinuance of agency service will harm the railroad because after the war and the shrinkage of war revenues, the carriers will need their customers and friends. Removing agents, antagonizing customers, irritating shippers, makes no friends. On the contrary, it makes bitter enemies.

In the present instance, it is unnecessary and can be due only to thought-

less cupidity. Annual business at the Cobden depot was $11,793.43 in 1943 and $5,015.58 in 1944. During the same two years the Chicago and Northwestern Railway Company paid $8,606,430 in excess profits taxes.

Request for removal of an agent because annual business at a station is $2,984.42 under the statutory limit of $8,000 impresses me as petty avarice when it comes from a carrier able to pay more than $8,000,000 in excess profits taxes in two years.

VII

The return of veterans has solved the man-power shortage. One of the arguments used by applicant in this and other cases is that it is impossible to secure agents and that the agent in question is needed elsewhere. Military authorities have disclosed the number of men released from Army duty. One railroad advertised in last week's magazines that it has 4,000 veterans back on their jobs. Obviously, the argument of man-power shortage is no longer relevant.

Conclusion

This Commission has both the opportunity and the obligation to serve constructively. Harassing little towns already burdened by war problems shows neither constructive thinking nor capacity to think.

It is our task to protect the state and the people from any further economic maladjustment. Consequently, I dissent from the proposed order.

MONTANA BOARD OF RAILROAD COMMISSIONERS

Re Great Falls Transfer & Storage Company

Docket No. MC-318, Order No. 491
August 31, 1945

APPLICATION *for certificate of convenience and necessity authorizing transportation of household goods by motor carrier; granted.*

Certificates of convenience and necessity, § 163 — Sufficiency of application — Motor carrier operation — Description of routes.

1. An application for a certificate of public convenience and necessity authorizing the transportation of household goods between "any and all points and places in the state" is sufficient and complies with a statute requiring an application to state the public highways over which and the fixed termini between which, or the routes over which the applicant intends to operate, if the same are fixed, or the particular city, town, station, or "locality" from or to which the applicant intends to operate, p. 110.

Certificates of convenience and necessity, § 115 — Motor carriers — Irregular routes — Contract service.

2. An application for a certificate of convenience and necessity authorizing the transportation of household goods between any and all points and places in the state by motor vehicles as a Class C carrier (one who transports commodities or persons under a remuneration fixed by agreement and has no regular routes or fixed termini) is not required to make out a case showing convenience and necessity between all the points which it is intended to serve, but it is only necessary to show that there are certain persons for which he desires to perform transportation services and that it would be convenient and is necessary that the transportation service be rendered to those persons, p. 110.

Certificates of convenience and necessity, § 11 — Discretion of Board.

3. The Board of Railroad Commissioners, in acting upon an application for a certificate of public convenience and necessity, has a broad discretion so long as it acts within the statute and follows the jurisdictional requirements therein set forth, p. 111.

Monopoly and competition, § 61 — Necessity of additional service — Opportunity to furnish service.

4. The Board, in passing upon an application for authority to operate a motor carrier service, must consider the present service rendered, whether additional service is needed, and whether the existing carrier has had an opportunity to furnish the service, p. 111.

Certificates of convenience and necessity, § 118 — Motor carriers — Transportation of household goods.

5. The fact that many things arise in connection with the movement of household goods which do not arise in movements of other commodities has a bearing upon the showing of convenience and necessity which must be made by an applicant for a certificate authorizing transportation of household goods, p. 112.

APPEARANCES: Melvin N. Hoiness, Attorney at Law, Billings, representing the applicant; Sherman W. Smith, Attorney at Law, Helena, appearing for protestants: Coulter Transfer Company, Helena, Taylor Transfer Company, Helena, and White Line Vans, Great Falls and Helena; Paul T. Keller, appearing for the Board.

Before: Horace F. Casey, Chairman and Paul T. Smith, Commissioner.

By the BOARD: In this matter, Great Falls Transfer and Storage Company, a corporation, made application in accordance with the requirements of Chap. 310, Revised Codes of Montana, 1935, and amendments thereto, for a certificate of public convenience and necessity authorizing the transportation of household goods, as defined by the Interstate Commerce Commission in Ex Parte No. MC-19 (17 MCC 467) between any and all points and places in the state of Montana by motor vehicles as a Class C operator;

[1, 2] The hearing was held at Great Falls, Montana, on August 14, 1945, at 9 o'clock A.M. in the council chambers of the Civic Center. Three protestants appeared and objected to

the introduction of testimony on the ground that the application was insufficient and did not comply with the statute, § 3847.10, and also raised the point that convenience and necessity was not shown.

As to the first matter, the statute, § 3847.10, subsection (b) 2, does state "The public highway or highways over which and the fixed termini between which, or the route or routes over which it intends to operate, if the same are fixed"; however, the statute goes on in this manner: "or the particular city, town, station, or locality from and/or to which the applicant intends to operate."

It must be noted that the last portion of the section does not say only city and town, but also contains the word locality.

The application is between any and all points and places in the state of Montana. Those words sufficiently describe the places from and to which the applicant intends to operate, in accordance with the statute. Subsection 2 of that statute is written in the disjunctive and the applicant may specify the routes over which he will operate, or he may state the places "from and/or to which" he intends to operate, which was done in this case. The application is sufficient in that regard and the objection is overruled.

According to § 3847.2, a Class C carrier is one who transports commodities or persons under a remuneration fixed in a contract, charter, agreement, or undertaking. It has no regular routes nor has it fixed termini. The statute contemplates that a Class C carrier does not serve the public in general. Therefore, it is only necessary for a Class C carrier, in making a showing of convenience and necessity, to show that there are certain persons for which he desires to perform transportation service, and that it would be convenient and is necessary that the transportation service be rendered to those certain persons. It is not contemplated by the statute that an applicant for a Class C permit would necessarily make out a case of showing for convenience and necessity between all the points which it is intended that he will serve for the reason that the service is to be intermittent and to be rendered as it will arise.

[3] So long as this Board acts within the statute and follows the jurisdictional requirements therein set forth, it has a broad discretion. Northern P. R. Co. v. Bennett, 83 Mont 483, PUR 1929C 139, 272 Pac 987; Interstate Transit Co. v. Derr, 71 Mont 222, PUR 1925A 622, 228 Pac 624.

[4] The Board must consider the present service rendered, whether additional service is needed, and has the existing carrier had an opportunity to furnish the service? Fulmer v. Railroad Comrs. (1934) 96 Mont 22, 28 P2d 849.

The Interstate Commerce Commission, in Re United Moving & Storage, Inc. (1942) 3 FedCC 181, Par. 30,213 stated: "As a general rule, we have been much less exacting with respect to evidence which we deem necessary to prove that public convenience and necessity require operations as a motor common carrier of household goods, than we have been in similar cases involving transportation of general freight. The character of the household goods moving business is such that it is difficult, in applications

for authority to institute new operations, to obtain the testimony of prospective shippers with respect to the need for the proposed service, or of persons who have been inconvenienced in the past by a lack of adequate service."

In the instant case, three witnesses representing large organizations testified that they had employees moving from city to city, and that it would be a great convenience for them to be able to employ a household mover to move them from or to any point or place within the state of Montana.

[5] The testimony in this case discloses that the movement of household goods is a peculiar transportation service in itself; that there are many things arise in connection with the movement of such goods which do not arise in movement of other commodities. That, in itself, has a bearing upon the showing of convenience and necessity which must be made.

A sufficient showing of convenience and necessity was made in this case.

It appearing to this Board, a copy of the application and notice of hearing thereon was served at least ten days before the date of the hearing, upon all of the parties, as required by § 3847.11, Revised Codes of Montana, 1935, and that after due consideration, and being fully advised in the premises, the Board has found from the evidence introduced at said hearing, after taking all of the facts and circumstances relating to the said application into consideration, that public convenience and necessity has been shown, and require the authorization of the transportation service proposed by said applicant.

Now therefore, it is *ordered* by the Board that the application of Great Falls Transfer & Storage Company, a corporation, in Docket No. MC-318 be, and the same is hereby, approved granting the applicant the right to an intrastate certificate of public convenience and necessity as a Class C carrier for the transportation of household goods, as defined by the Interstate Commerce Commission in Ex Parte MC-19 (17 MCC 467) as a commodity under the following commodity description: "The term 'household goods' means personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling; furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments; . . . and articles including objects of art, displays, and exhibits, which because of their unusual nature or value require specialized handling and equipment usually employed in moving household goods," by motor vehicle between any and all points and places in the state of Montana. Said certificate to contain the following limitation: "No transportation shall be rendered under this certificate when both the point of origin and destination are within the county of Lewis and Clark."

It is *further ordered* that the rights herein granted to the applicant are subject to full compliance with the laws of the state of Montana, and rules and regulations of the Board of Railroad Commissioners, and the operation authorized herein may not be commenced until the certificate is issued.

It is *further ordered* that a full, true, and correct copy of this order be sent

forthwith, by first class United States mail, to said applicant herein, to Melvin N. Hoiness, attorney at law, Billings, Montana, representing the applicant; and to the protestants, Coulter Transfer Company, Helena, Montana; Taylor Transfer Company, Helena, Montana; White Line Vans, Helena, Montana, and Sherman W. Smith, attorney at law, Helena, Montana.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Equitable Gas Company

Complaint Docket Nos. 11380, Sub. 15 and 14038
October 29, 1945

HEARING *on exceptions to Commission denial of proposed rate increase; exceptions dismissed.*

Rates, § 653 — Orders — Res adjudicata.

1. Commission orders fixing rates for utility service are not res adjudicata, p. 114.

Rates, § 186 — Evidence — Burden of proof.

2. The Commission properly ruled that an applicant for authority to increase rates must, in order to discharge its burden of proof, present evidence not only permitting but producing the conclusion that the increased rates are reasonable and that it is the duty of the Commission to reject the rates unless the proof clearly supports them, p. 114.

Valuation, § 39 — Measures of value — Reproduction cost.

3. Reproduction cost does not deserve controlling weight in a rate base determination, although it should be considered in ascertaining fair value for rate-making purposes, p. 115.

Rates, § 650 — Procedure — Exception to finding.

4. An exception to findings of fact in a rate case is improper, under Rule 51 of the Commission's Rules of Practice, where it does not incorporate either appropriate record references or a specific statement of the finding desired, p. 115.

Valuation, § 79 — Reproduction cost determination — Price changes.

5. The Commission properly refused to accept, as binding, changes in price levels since December 31, 1938, in determining reproduction cost, in view of their abnormal and inflationary aspects, p. 116.

Valuation, § 373 — Natural gas leaseholds — Original cost basis — Market value basis.

6. Inclusion of leaseholds in a reproduction cost finding at original cost rather than fair market value is proper, p. 116.

Valuation, § 49 — Rate base determination — Trended original cost.

7. The Commission properly disregarded trended original cost in determining fair value of public utility property for rate-making purposes, p. 116.

Depreciation, § 26 — Annual allowance — Consistency with accrued depreciation determination.

8. Annual depreciation expense allowance need not be consistent with accrued depreciation determination, p. 117.

Revenues, § 2 — Future estimates — Single year basis.

9. The Commission, in 1945, in estimating future revenues and expenses for rate-making purposes, properly used 1944 operating revenue and expense experience without regard to such experience in other years, since the immediate future can best be forecast on the basis of experience in the immediate past, particularly where there are uncertainties in the present economic situation, p. 117.

By the COMMISSION: By our order nisi of July 10, 1945, 60 PUR(NS) 99, we sustained the existing rates of the Equitable Gas Company and rejected proposed increased rates. The matter is now before us on exceptions filed by the city of Pittsburgh and by respondent. The exceptions have been orally argued before us.

[1] The city of Pittsburgh, at the outset of its exceptions, plainly states that it "concurs in the Commission's conclusion, in its order nisi of July 10, 1945, in the above-entitled proceeding, that the rate increase requested by the respondent gas company should be denied. Nevertheless, the city files the following exceptions to certain of the Commission's findings therein which in some future proceeding may be prejudicial to the city and other customers of the company and contrary to the public interest."

In view of this statement, the determinative issue raised by the city is the binding effect of our findings. This issue is resolved against the fears of the city by the decision in Perkasie Sewer Co. v. Public Utility Commission (1940) 142 Pa Super Ct 262, 265, 38 PUR(NS) 403, 405, 16 A (2d) 158, wherein it was held on this point that "we need only emphasize the observation made in our recent opinion in Beaver Valley Water Co. v. Public Utility Commission (1940) 140 Pa Super Ct 297, 35 PUR(NS) 119, 14 A2d 205, that Commission orders fixing rates are not res judicata." Under this rule of law the city cannot be prejudiced by our order nisi and we will therefore dismiss its exceptions.

The exceptions of respondent are in a different category, and require detailed examination which will be given under the numbers used by respondent.

Exception 1

[2] This exception questions our statement that respondent in order to discharge its burden of proof relative to the proposed increased rates "must present evidence not only permitting but producing the conclusion that the increased rates are reasonable, and it is the duty of the Commission to reject the rates unless the proof clearly supports them." Respondent apparently misapprehends the significance of our phraseology. It would seem

that a reading of our order could leave no doubt that we had laid no greater burden on respondent than that described in St. Clair Coal Co. v. Public Service Commission (1922) 79 PaSuperCt 528, amplified by the discussion in Peoples Nat. Gas Co. v. Public Utility Commission (1940) 141 PaSuperCt 5, 23, 35 PUR(NS) 75, 14 A2d 133. The exception will be dismissed.

Exception 2

[3] This exception questions our statement that, for reasons fully stated in certain of our prior rate case orders, reproduction cost does not "present a figure deserving controlling weight in rate base determination." In Peoples Nat. Gas Co. v. Public Utility Commission (1943) 153 PaSuperCt 475, 488, 51 PUR(NS) 129, 34 A2d 375, and Philadelphia Transp. Co. v. Public Utility Commission (1944) 155 Pa SuperCt 9, 55 PUR(NS) 473, 37 A 2d 138, the two most recent Pennsylvania rate opinions, the court held that reproduction cost should be considered, but nowhere held that it must be taken as the precise measure of fair value or rate base. Without the latter holding we are not constrained to justify our expression of opinion by close analysis of the phrase "controlling weight." Such an excursion into the realm of semantics might be instructive but is unnecessary, since we deem the meaning clear and within the rules of law. Our views on the legal principles governing rate base determination were developed at some length in the Fair Value section of our order nisi and elaboration here would be superrogatory. The exception will be dismissed.

Exception 3

[4] This exception questions as a "conclusion of law" our finding of fact that December 31, 1944, reproduction cost estimates submitted by the respondent "are not entitled to material weight both because of admitted defects due to speed in their preparation and because the years after 1938 present a price level which is obviously abnormal and reflects the inflationary effects of war."

The statement involved is one of fact, and not of law. It is supported as to defects due to speed by the testimony of respondent's witness Roth that he prepared one of the estimates referred to because he realized he "did not have time to make a detailed study." He further admitted that the figures in this exhibit were "included more as a matter of information than as a reliable index." The portion of the statement dealing with the war-induced abnormality of the price level since 1938 is fully supported not only by common knowledge, but by the record evidence. Furthermore, since the exception is taken to findings of fact, it is improper under Rule 51 of our Rules of Practice in that it does not incorporate either appropriate record references nor a specific statement of the finding desired. We find the exception untenable on both substantial and procedural grounds, and it will be dismissed.

Exception 4

This exception questions as a "conclusion of law" our finding of fact that the December 31, 1938, reproduction cost estimate submitted by respondent is "the fairest representation of reproduction cost derivable from the present record." The finding involved is

one of fact, not of law, and this exception, therefore, violates Rule 51 of our Rules of Practice since it does not incorporate appropriate record references nor a specific statement of the finding desired. In addition to these serious procedural defects, the exception is untenable in the light of the considerations set forth in the context of our order nisi. The exception will be dismissed.

Exception 5

This exception questions as a "conclusion of law" our finding of fact that $68,613,969 represents the fair reproduction cost (without going concern value or working capital) of respondent's property at December 31, 1944. This exception is untenable for the procedural reasons stated in relation to Exceptions 3 and 4. We may state, however, that a review of the record leads us to affirm the questioned finding as fully supported by the evidence and by the discussion in our order nisi. The exception will be dismissed.

Exception 6

[5] This exception alleges failure to give consideration to changes in price levels since December 31, 1938, in determining reproduction cost. In so far as such changes were reflected in the record they were considered by us, as evidenced by our refusal to accept them as binding in view of their abnormal and inflationary aspects. This refusal is proper. Peoples Nat. Gas Co. v. Public Utility Commission (1943) 153 PaSuperCt 475, 483, 51 PUR(NS) 129, 34 A2d 375. The exception will be dismissed.

Exception 7

[6] This exception questions our inclusion of leaseholds in the reproduction cost finding at original cost rather than fair market value. The unreliability of the market value estimates is apparent from the testimony and makes this exception untenable. The controverted course has been approved by several United States Supreme Court decisions, the latest being Canadian River Gas Co. v. Federal Power Commission (1945) 324 US 581, 89 L ed —, 58 PUR(NS) 65, 65 S Ct 829, 840. The exception will be dismissed.

Exception 8

This exception questions as a "conclusion of law" our finding of $38,044,776 for depreciated reproduction cost at December 31, 1944. The basis of this finding is fully explained in our order and respondent neither offers any rationale for its exception, nor suggests any alternative finding. We are therefore unable to consider the merits of the exception, if any. We may also note that, in our judgment, the finding involved is a matter of fact, not of law, and the exception therefore violates our Rules of Practice. The exception will be dismissed.

Exception 9

This exception questions as a "conclusion of law" our finding that respondent's trended original cost estimate "does not represent actual cost, present-day cost, or anything relevant to fair value." This finding is a statement of simple fact the correctness of which appears obvious upon review of the record. The exception will be dismissed.

Exception 10

[7] This exception questions our disregard of trended original cost in

determining fair value. We rejected a similar exception without incurring criticism in the decision on appeal from the order. Peoples Nat. Gas Co. v. Public Utility Commission, *supra*. The exception will be dismissed.

Exception 11

This exception questions our finding of $31,000,000 as fair value at December 31, 1944, but suggests no alternative. At oral argument on these exceptions, counsel for respondent contended for a rate base of $40,000,000, a figure in excess of the depreciated reproduction cost of $38,044,776, the highest value factor. The finding represents our considered judgment on the record facts and our analysis of those facts. We have reëxamined the bases of this judgment and find no reason to vary its result. The exception will be dismissed.

Exception 12

This exception questions our finding of $2,015,000 as allowable return. This finding is the simple mathematical result of findings questioned by other exceptions which we have found untenable. This exception will be dismissed.

Exception 13

This exception relates to our discussion of respondent's witness Scharff's testimony on annual depreciation and questions as a "conclusion of law" our finding that, "acceptance of Scharff's annual depreciation figures, or of percentages based thereon, would necessitate an upward revision of accrued depreciation, and a corresponding reduction in fair value and allowable return." This finding is a matter of fact, not of law, and again respondent has failed to comply with our Rules of Parctice requiring appropriate record citations, and the suggestion of an alternate finding. Since we are told neither how we erred nor how to correct our error, the exception must and will be dismissed.

Exception 14

This exception questions our finding that respondent's allowable annual depreciation expense is $535,000. This finding represents our best judgment on the relevant facts. Again respondent tells us neither how we have erred nor what our finding should be. The exception will be dismissed.

Exception 15

[8] This exception insists that we must allow annual depreciation expense consistent with our accrued depreciation determination. A similar exception was rejected in the Peoples Natural Gas Company Case and the Commission annual depreciation allowance in that case was affirmed on appeal. Peoples Nat. Gas Co. v. Public Utility Commission, *supra*. The exception will be dismissed.

Exception 16

This exception questions our finding that respondent's 1944 operating income is $2,156,509. Again noncompliance with the Rules of Practice leaves us unable to know or correct our error, if any. The exception will be dismissed.

Exception 17

This exception questioning our conclusion that the proposed rate increase cannot be sustained, is a general exception which does not require discussion. It will be dismissed.

Exception 18

[9] This exception questions our

use of 1944 operating revenue and expense experience without regard to such experience in other years. It seems clear to us that the immediate future can best be forecast on the basis of experience in the immediate past, particularly where the uncertainties in the economic situation are so numerous as at present. If future revenues and expenses indicate a justification for increased rates, there is nothing to prevent respondent from submitting such rates for consideration by the Commission in the light of conditions existing at the time of filing. The questioned procedure is in accord with that followed in several recent cases and is proper under Peoples Nat. Gas Co. v. Public Utility Commission, *supra*. The exception will be dismissed.

Exceptions 19 and 20

These exceptions are formal and need not be discussed in detail. They will be dismissed.

Respondent has not afforded the assistance in consideration of its exceptions contemplated by Rule 51 of our Rules of Practice. No brief has been filed in support of the exceptions and the exceptions themselves contain no discussion amplifying the points in question. However, we have carefully reviewed the record in the light of the exceptions and the oral arguments presented by counsel for the respondent, counsel for the Commission and counsel for the interveners, and we find no reason to alter the expressions in our order nisi of July 10, 1945, 60 PUR(NS) 99.

COLORADO PUBLIC UTILITIES COMMISSION

Re Earl D. Larsen, Doing Business As Larsen Transfer & Storage Company

Decision No. 24978, Application No. 6981
September 25, 1945

APPLICATION *for authority to operate motor vehicles; granted.*

Motor carriers, § 12 — Jurisdiction of Commission — Renting or leasing of trucks.

1. The Commission has no jurisdiction to supervise the renting or leasing of trucks where the lease is bona fide and the lessee has the full management, operation, and control of a truck while it is under lease to him and in view of that fact is liable for acts of negligence or mismanagement in the handling of the truck, p. 120.

Motor carriers, § 11 — Jurisdiction of Commission — For-hire truck operations.

2. The Commission has jurisdiction of the operation of motor trucks for hire, p. 120.

Monopoly and competition, § 65 — Private carrier by motor vehicle — Pickup and delivery of freight.

3. Manufacturing concerns and retail and wholesale merchandisers are entitled to private carrier service by motor vehicle for hire, for pickup and delivery of freight for over-the-road carriers of freight by motor vehicle, when the volume of business is not so great that the loss of it would definitely impair the efficiency of common carriers furnishing pickup and delivery service, p. 121.

Certificates of convenience and necessity, § 163 — Sufficiency of application.

4. Dismissal or denial of an application for authority to engage in a "for-rent truck service" when in fact the applicant requests a permit or certificate to operate a for-hire pickup and delivery service would be overtechnical, as the application may be considered as one seeking authority to operate a for-hire motor carrier service as a Class "B" private carrier, p. 121.

APPEARANCES: E. V. Holland, Denver, for applicant; T. A. White, Denver, for Rio Grande Motor Way, Inc., Larson Transportation Company; T. A. Stockton, Jr., Denver, and A. J. Fregeau, Denver, for Weicker Transfer and Storage Company; Arthur A. Brooks, Jr., Denver, for The Colorado Transfer and Warehousemen's Association; T. S. Wood, Denver, for The Public Utilities Commission of the state of Colorado.

By the COMMISSION: The above matter was heard at Denver, Colorado, on June 26, 1945.

Applicant, engaged in the business of moving and transfer within the city limits of the city and county of Denver, and doing business as "Larsen Transfer & Storage Company," seeks authority to conduct a moving and storage business in an area not to exceed 5 miles beyond the city limits of Denver.

Applicant stated that he has rented trucks to the Morey Mercantile Company from day to day, as needed; that he usually is called the night before or in the morning, and that he furnished a truck and driver which were paid for by the hour by Morey. He also has rented trucks to other customers. In the case of his operation with Morey, his trucks go to Morey's place of business, are loaded, and then proceed to North Denver, and sometimes to Edgewater or Lakewood. This is a frequent occurrence. He also rents trucks to other warehousemen and movers, among which are North Denver Transfer, U. S. Transfer, MacGregor Transfer and Storage Company, Acme Transfer, Russell Freightways, Martin Truck Line, and Harris Truck Line.

Upon examination, applicant testified that he intended to ask in his application for a permit, and not for a certificate.

He stated that his net worth is $25,000; that he has been in the trucking business since 1906, and that his equipment is in good shape, considering present conditions.

When he picks up for the Martin Truck Line and others, he makes a special charge. To Morey, he merely rents the trucks, and the trucks are under Morey's supervision and control.

Motion was made by Mr. White that applicant's application, in so far

as transporting commodities for Morey, should be dismissed and alleged as a reason that the Commission had no jurisdiction over such a situation. Mr. Stockton joined in this motion, and motion was taken under advisement.

Upon examination by Mr. Brooks, applicant stated that he made no request for the transportation of household goods.

Upon cross-examination by Mr. Stockton, applicant stated that he had done business with Martin since January 1, 1945, with Harris about one and a half years, and with Acme, about two months. He also stated that he did want to transport household goods for Martin and Harris and any others who might use his docks; that all work for Martin was done on a strictly hourly basis. He further stated that he intended to rent trucks for the transportation of commodities outside of the city only by the hour, and that was all he asked in his application. He stated that he would not compete with line-haul carriers to Littleton, but would to Aurora. He also said that in his opinion there were plenty of carriers to take care of the business and that he believed the service was adequate to a 5-mile area; that he wanted only authority to serve his own customers.

Cecil A. Foster, owner of PUC No. 72, stated that he has authority to serve Remico, Fort Logan, Littleton, Morrison, Bailey, Englewood, Aurora, Fitzsimons, and Buckley Field; that he has leased equipment from Larsen for freight movement within the 5-mile area. He also testified that as soon as the war was over, there would be a lot of idle equipment on hand.

A. J. Fregeau, general manager of Weicker Transfer and Storage Company, owner of PUC Nos. 8 and 241, testified that his company picks up and delivers for other operators; that Rocky Mountain Parks Transportation Company is one customer served regularly and that the other customers are on call and demand; that there are other carriers whom his company serves; that merchandise in pickup and delivery service is heavier than a year ago, due to Army installations. He stated that Weicker has 122 pieces of equipment and plenty of service for the type sought by applicant, and that applicant's operations would impair the business of Weicker when business returns to normal and present service is adequate.

[1, 2] Upon the record here made, it seems that applicant desires to furnish a 2-way service—one to rent trucks, the other a for-hire truck carrier service for a limited number of customers, all of whom are tenants or customers of his dock. We do not have jurisdiction to supervise the renting or leasing of trucks where the lease is bona fide and the lessee has the full management, operation, and control of the truck while it is under lease to him, and in view of that fact, is liable for acts of negligence or mismanagement in the handling of the truck. This was the basis of motion of counsel for Weicker and Rio Grande Motor Way to dismiss the application. We do have jurisdiction of for-hire truck operations. If the lease were not a bona fide lease, and in fact amounted to a carriage for hire arrangement under guise of a lease, we would have juris-

diction. Applicant, in that event, would be violating the Motor Vehicle Carrier or the Private Carrier acts. He suggested that his service would be limited to a few customers; that the service was incidental to his dock service; that the service furnished by him would be more convenient and more readily available at the times and places required by his dock customers than the service of common carriers or private carriers in a position to furnish pickup and delivery service; that such service was furnished by him for them in the city and county of Denver; that in order to deliver or pick up the small amount of freight originating or consigned to points within a radius of 5 miles of the city limits as a for-hire carrier, he apparently needed a permit if he was to stay within the law.

Obviously, his customers prefer to have all their pickup and delivery service furnished by one agency. It is not satisfactory to have the Denver freight handled by applicant, and freight near, but outside the Denver City Limits, moved by other carriers who, at times, may be difficult to locate.

[3] On a number of occasions, we have ruled that manufacturing concerns and retail and wholesale merchandisers are entitled to private carrier service when such service is furnished by the carrier who has a limited number of customers and is in a position to furnish the service more quickly and easily than other carriers. It would seem that the same rule should apply to over-the-road carriers by truck where the volume of business is not so great that the loss of it would definitely impair the efficiency of common carriers furnishing pickup and delivery service. Here, the only carrier testifying in opposition operates perhaps the most extensive line-haul service in the state. It is possible that carriers here involved may prefer to use an independent service. There was some testimony to the effect that the failure to get this business might tend to impair the efficiency of the Weicker operation. Apparently this carrier has never enjoyed the business here involved, and it would seem that it probably is unlikely to get it. We apprehend that the fear of impairment of service on account of the granting of this permit is more imaginary than real.

[4] The application presented here did not, in terms, request a permit or certificate to operate a for-hire pickup and delivery service. In effect, applicant asked the Commission to grant authority to engage in a "for-rent truck service." Under the circumstances, we think that a dismissal or denial of the application upon that ground would be overtechnical. Procedure before the Commission is supposed to be somewhat informal. Therefore, we will consider the application as one seeking authority to operate a for-hire motor carrier service as a Class "B" private carrier.

The Commission finds:

That it does not have jurisdiction of applicant's "leased truck service"; that motion of counsel for Weicker and Rio Grande Motor Way relative thereto was well taken, and therefore we must deny the application in so far as it seeks authority from us to conduct such service.

That said application should be considered as an application for authority to operate as a Class "B" private carrier by motor vehicle for hire

for the pickup and delivery of freight for over-the-road carriers of freight by motor vehicle between applicant's dock in Denver and points within a radius of 5 miles of the city limits thereof, customers to be limited to "over-the-road carriers" who are customers or tenants of his dock.

That the granting of a private carrier permit for such service will not impair the efficiency of any adequate motor vehicle common carrier performing such service in that part of said area outside the limits of the city and county of Denver, and that as to service within the city limits, the Commission does not have jurisdiction.

ORDER

The Commission *orders*:

That it does not have jurisdiction of applicant's "leased truck service," and the application in so far as it seeks authority to conduct such service is hereby denied.

That Earl D. Larsen, doing business as "Larsen Transfer & Storage Company," Denver, Colorado, be, and he hereby is, authorized to operate as a Class "B" private carrier by motor vehicle for hire for the pickup and delivery of freight for over-the-road carriers of frieght between applicant's dock in Denver and points within a radius of 5 miles of the city limits thereof, customers to be limited to "over-the-road carriers" who are customers or tenants of his dock.

All operations hereunder shall be strictly contract operations, the Commission retaining jurisdiction to make such amendments to this permit deemed advisable.

This order is the permit herein provided for, but it shall not become effective until applicant has filed a statement of his customers, copies of all special contracts or memoranda of their terms, the necessary tariffs, required insurance, and has secured identification cards.

The right of applicant to operate hereunder shall depend upon his compliance with all present and future laws and rules and regulations of the Commission.

This order shall become effective twenty days from date.

VERMONT SUPREME COURT

Mose Ashline

v.

Public Electric Light Company

No. 585
— Vt —, 44 A2d 164
October 2, 1945

APPEAL *from decree enjoining electric company from discontinuing service for nonpayment of bill for collateral service; affirmed and remanded.*

Payment, § 41 — Service denial to enforce — Collateral service.

An electric company may not deny service to a consumer because of his refusal to pay a bill for equipment repairs made by the same company.

Before Moulton, C. J., and Sherburne, Buttles, Sturtevant, and Jeffords, JJ.

APPEARANCES: Sylvester & Ready, of St. Albans, for plaintiff; P. C. Warner, of St. Albans, for defendant.

STURTEVANT, J.: This is a bill in chancery seeking to enjoin the defendant from removing an electric meter from the plaintiff's premises and from the collection of a bill for material and labor furnished by the defendant to the plaintiff. The case was heard on bill and answer and evidence presented. After findings of fact were filed a decree was entered ordering that the defendant recover from the plaintiff the sum of $14.70 for labor and materials furnished. The defendant is enjoined from discontinuing electric service to the plaintiff's premises. The case is here upon the defendant's exceptions.

From the findings the following material facts appear: The defendant is a public service corporation serving the city of St. Albans with electric light and power. The plaintiff lives on a farm within the territory served by the defendant. In August, 1942, the plaintiff purchased a used electric refrigerator and took it to the defendant's place of business to have it put in running order. It needed certain repair parts which were difficult to obtain because of conditions brought about by the war. The refrigerator was put in good running order by the defendant, kept running three weeks on defendant's floor and was delivered in good condition to the plaintiff in April, 1943. After it had been delivered to the plaintiff it ran but about one day when it stopped and was repaired by the G. S. Blodgett Co. in August, 1943, and has worked all right since that time. The defendant rendered a bill for labor and parts furnished for the refrigerator in the sum

of $14.70 which the plaintiff refused to pay. On June 15, 1944, the defendant sent plaintiff a statement for electric current and also a bill for labor and repair parts for the refrigerator and to that bill attached a notice that "the electric service will be discontinued unless the overdue account is paid before June 23rd." The plaintiff paid the bill for current but refused payment of the bill for material and labor furnished in repairing the refrigerator. On June 23, 1944, the defendant caused the electric meter to be removed from the plaintiff's premises and on the next day, after service of a temporary injunction order on the defendant, the meter was again installed and the plaintiff has since had electric service. The materials and labor furnished for the repair of the refrigerator at the plaintiff's request were necessary and it was in good running order when delivered to the plaintiff after it had been repaired by the defendant. For such repairs the plaintiff is indebted to the defendant in the sum of $14.70. The decree states that the defendant is entitled to recover that sum from the plaintiff to pay for the aforementioned repairs. The decree also orders that the defendant is restrained and enjoined from discontinuing electric service at the premises of the plaintiff in aid of collecting the bill for repairs to the refrigerator so long as the plaintiff pays the bills now due or to become due for electric service furnished and to be furnished to the plaintiff's premises in accordance with the statements and under the terms of the billings of the defendant.

The case is here on exceptions by the defendant to the order in the decree granting the injunction restraining it from discontinuing electric service to the plaintiff's premises.

So far as here material, P. L. 6452 states: "A person, association, company, or corporation engaged in the business of generating in this state electric energy and distributing the same for general sale for heating, lighting or power purposes or for any other public use, if and when requested so to do, at all reasonable times, shall sell and distribute the same to any and all persons, . . . that desire to use the same within this state for either or any of such purposes. . . . The charges made by a person, company, or corporation for electric energy so sold and distributed, shall be reasonable; . . ."

This statute makes it the duty of a public service company, as therein designated, to sell electric power and light to any person within the territory served by it who wishes to purchase same. While the electric energy is to be sold to the customer, that is paid for by him, there is nothing in the statute directly or by implication that gives such public service corporation a right to refuse to furnish electric service to a customer in its territory because the customer is refusing to pay a bill for some collateral service such as repairing an electric refrigerator. Since the plaintiff was ready and willing to pay for the electric service demanded and had paid the defendant for all such service furnished at the time the defendant refused to furnish further service and removed the meter from the plaintiff's premises, such refusal and removal were without right or authority of law. That is, under the provisions of P.L. 6452 and other statutes

relating to this matter, the defendant could not lawfully refuse to furnish electric service to the plaintiff because of the plaintiff's refusal to pay a bill for a collateral service. Such is the law in this state and also in other jurisdictions according to the great weight of authority. 20 CJ, pp. 333, 334; Annotation in 55 ALR 771; 29 CJS Electricity, § 25, pp. 540, 541.

The defendant has cited several cases in support of its contention. However, not one of them support the proposition for which it is here contending, viz., that a public service company may discontinue its service to a customer to force the collection of a bill for a collateral service and, as we have already seen from the wording of our statute P.L. 6452, such is not the law.

Judgment affirmed and cause remanded.

FEDERAL POWER COMMISSION

Re Puget Sound Power & Light Company

Docket Nos. IT-5962, IT-5963
August 31, 1945

APPLICATIONS *for authority to sell or otherwise dispose of electric properties and for authority to issue securities, or, in the alternative, for dismissal of applications for lack of jurisdiction; dismissed for want of jurisdiction.*

Interstate commerce, § 34.1 — Status of company under Federal Power Act.

An electric company which has been authorized by the Federal Power Commission to use interconnected systems during a war emergency, to transmit electricity to Canada for relieving the emergency, and to import a small amount of electricity under a Presidential Permit, which transactions were authorized to be carried out without causing the company to be a "public utility" within the definition of § 201 of the Federal Power Act, is not such a "public utility" when it does not own or operate facilities used for the transmission or sale at wholesale of electric energy transmitted from any state and consumed at a point outside thereof.

By the COMMISSION: It appears that:

(a) Puget Sound Power & Light Company (hereinafter referred to as the Applicant) having its principal business office in Seattle, Washington, on July 31, 1945, filed an application (Docket No. IT-5962), pursuant to § 203 of the Federal Power Act, for an order authorizing the Applicant to sell or otherwise dispose of all of its electric properties, and an application (Docket No. IT-5963), pursuant to § 204 of the act, for an order

authorizing the issuance of certain notes in the principal amount of $15,125,000. In both applications Applicant requested the authorizations by the Commission or in the alternative dismissal for lack of jurisdiction on the ground that the Applicant is not a "public utility," as defined in § 201 of the act.

(b) Applicant also requested that the Commission first determine the jurisdictional question before considering the merits of the applications, and further requested that the records in the proceedings entitled in Re Ambrose, et al. Docket No. ID-127, et al., Puget Sound Power & Light Co., Intervenor, and in Re Puget Sound Power & Light Co., Docket No. IT-5649, and all sworn reports filed with the Commission by the Applicant and by The Washington Water Power Company be considered as a part of the record in this proceeding.

(c) On August 1, 1945, the Commission ordered that a hearing be held August 21, 1945, with respect only to the question of whether the Applicant is or is not a "public utility" as defined in § 201 of the Federal Power Act, and accordingly whether the requirements of §§ 203 and 204 for authorization and approval by this Commission apply to the proposed transactions, respectively. The Commission's order further provided that if the Applicant, or any person, desired to introduce evidence with respect to the question of whether the Applicant is or is not a "public utility," as defined in § 201, it should notify the Commission on or before August 17, 1945. The Commission's order of August 1, 1945, as well as notice of the above applications, was published in the Federal Register on August 3, 1945. Written notice of the applications and the order was duly given to the Department of Public Utilities of Washington, the governor of the state of Washington, and to other interested parties.

(d) On August 21, 1945, a hearing was held pursuant to the Commission's order of August 1, 1945. No requests to introduce evidence on the jurisdictional issue were received in response to the aforesaid notices and no one appeared at the hearing to be heard on the jurisdictional issue other than Commission counsel. The Applicant notified the Commission that it would not attend inasmuch as no other persons had requested to be heard, and assumed that the matters referred to in Par (b) hereof would be incorporated into the record by Commission counsel together with the other data Commission counsel desired to introduce in evidence.

(e) At the hearing the examiner, upon request of counsel for the Commission, incorporated into the record, by reference thereto, the records of the proceedings entitled Re Ambrose, et al., Docket No. ID-127, et al., Puget Sound Power & Light Co., Intervenor, and in Re Puget Sound Power & Light Co., Docket No. IT-5649; the formal files of the Commission with respect to the Applicant, in Docket Nos. IT-5595, IT-5812, and IT-5893; all FPC Forms Nos. 1 and 12 filed by The Washington Water Power Company, Pacific Power and Light Company and Puget for the years 1940 through 1944, and all such forms filed by the Administrator of the Bonneville Power Project for the years 1941 through 1944; and FPC Forms

No. 223-A, filed by Puget Sound for the years 1941 through 1943. It appears from the record that the incorporation of all of this material was agreed to by the Applicant. The hearing was closed and the matter submitted to the Commission upon the record.

The Commission, upon consideration of the record in these proceedings, *finds* that:

(1) On February 3, 1943, in Docket No. IT-5812, 3 Fed PC 912, the Commission entered an order, pursuant to § 202(d) of the Federal Power Act, with respect to the Applicant's use of its interconnections with The Washington Water Power Company, the city of Seattle, and Bonneville Power Administration and interconnected systems during the war emergency, but not beyond ninety days after the cessation of hostilities. On July 18, 1944, in Docket No. IT-5893, Applicant was authorized to transmit electric energy from the United States to Canada for the purpose of relieving a war emergency situation on the electric system of British Columbia Electric Railway Company, Ltd., which service and interconnection is to be terminated ninety days after the cessation of hostilities. On April 23, 1942, in Docket No. IT-5595, Applicant was granted a Presidential Permit, to import from Canada a small amount of energy annually for local distribution in Point Roberts, Washington. The transactions referred to in these orders were authorized to be carried out without causing the Applicant to be a "public utility" by reason thereof.

(2) With the exception of the transactions referred to in Par (1), above, which transactions do not affect the "public utility" status of the Applicant, none of the facilities owned or operated by the Applicant are used for the transmission or sale at wholesale of electric energy transmitted from any state and consumed at a point outside thereof.

(3) Applicant does not own or operate facilities for the transmission or sale at wholesale of electric energy in interstate commerce within the meaning of the Federal Power Act, and the proposed sale of its electric properties and issuance of securities are not subject to the requirements of §§ 203 and 204.

The Commission *orders* that: The applications described in Par (a), above, be and the same hereby are dismissed for want of jurisdiction.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Borough of Mercer

Application Docket No. 64915
October 22, 1945

MOTION *to dismiss application for approval of municipal acquisition and operation of public utility property; motion denied.*

Municipal plants, § 26 — Acquisition of utility property — Sufficiency of application.

An application for approval of municipal acquisition and operation of utility property beyond the corporate limits should not be dismissed on the ground that the application does not contain a description of the property to be acquired, an estimate of the cost of acquisition and operation, a statement of the precise manner of financing the acquisition, estimates of operating costs and revenues, the borrowing capacity of the municipality, and a copy of the enabling resolution, where such matters are either within the knowledge of the protestant public utility company rather than the applicant or are properly the subject of evidence in the proceeding.

By the COMMISSION: This matter is now before us upon a motion to dismiss filed by Mercer Water Company, alleging in general that the application should be dismissed for want of sufficiency and substance and for want of the necessary averments to give the Commission jurisdiction. It is specifically alleged that the application does not contain (a) a description of the plant to be acquired, (b) an estimate of the cost of acquisition and operation, (c) a statement of the precise manner in which the municipality proposes to finance the proposed purchase, (d) an estimate of the cost of operation, (e) an estimate of revenue. The motion to dismiss further alleges that the application is premature, fails to show the borrowing capacity of the borough of Mercer, and contains no copy of a resolution of the borough council authorizing the purchase. An answer has been filed by the borough of Mercer generally traversing the substantial allegations of the motion.

The matters set forth by the motion as lacking in the application are either within the knowledge of the protestant rather than the applicant or are properly the subject of evidence in this proceeding. The jurisdiction of the Commission and the procedure are supported by Waynesboro Water Co. v. Public Service Commission (1922) 78 Pa Super Ct 143; Williamsport v. Williamsport Water Co. (1930) 300 Pa 439, 150 Atl 652; Pottstown v. Public Utility Commission (1941) 144 Pa Super Ct 220, 39 PUR(NS) 160, 19 A(2d) 610; therefore,

It is *ordered*: That the motion to dismiss the application be and is hereby refused, and that hearings be scheduled in due course.


Power

Industrial Progress

Selected information about products, supplies, and services offered by manufacturers. Also announcements of new literature and changes in personnel.

Honeywell Announces Plan to Expand Four Factories

A $3,500,000 expansion program involving additions to plants and machinery in four United States and Canadian cities has been announced by Minneapolis-Honeywell Regulator Company. Needed to handle expanding sales in all company divisions, the new program follows purchase of a 10-story Minneapolis factory and the addition of four floors to the main plant during the war years, Harold W. Sweatt, president, stated.

Included in the program is the construction of a new wing to the main plant in Minneapolis. Company operations in Chicago, Toronto, and Philadelphia also will be enlarged either by the purchase of existing buildings or the addition of floor space to current structures. The building program will be started immediately. Negotiations for the purchase of machinery to be housed in the new buildings have already begun.

It was pointed out that reconversion of all Honeywell plants was practically completed and that current production levels were approximately 30 per cent above previous peacetime peaks. The number of employees in all plants and divisions is now about double 1939 levels, Mr. Sweatt said, while employment peaks will rise considerably above current levels when the present expansion program is completed.

Chicago Office Reopened By Homelite

HOMELITE CORPORATION, Port Chester, New York, announces the reopening of an office to serve the Chicago area. Located at 2409 Lake street, Melrose Park, Illinois, the office will be managed by T. W. Gramm, formerly manager of Homelite's Philadelphia office. The new office has shop facilities for complete servicing and repair of Homelite units.

"The Service of Selling"

THE Cleveland Heater Company, 2310 Superior avenue, Cleveland 14, Ohio, announces the availability of a set of two books entitled, "The Service of Selling," by Kenneth Lawyer, which cover every important problem of personal selling and are written for the home appliance salesman.

The books outline modern principles of salesmanship and how they may be applied to meet postwar merchandising problems. They show the salesman that management is intensely aware of the problems he faces daily, and it is more than willing to assist him in finding a solution.

"The Service of Selling" was written for all those who come in contact with customers, as well as office employees, demonstrators, supervisors, home service directors, department managers, and other sales and contact representatives.

The books are bound in red cloth and are priced at $4. Copies may be obtained from the Cleveland Heater Company.

MM&M Announces Sales Personnel Changes

MANNING, MAXWELL & MOORE of Bridgeport, Connecticut, manufacturers of Ashcroft gauges, Consolidated safety and safety relief valves, Hancock valves, and American industrial instruments, announce the following sales personnel changes:

Charles L. Harris, manager of distributor sales; Newton P. Selover, manager of the midwestern district; William F. Loos, eastern district manager with headquarters in the executive office of the Chrysler building, New York city; and, William H. Bolin, mideastern district manager with headquarters in Pittsburgh.

The company reports that the distributor program launched in the early part of 1945 has developed potentials and possibilities far beyond plans made when the program was adopted. An increasing number of distributors are being appointed throughout the country on all of the well known trademarks of MM&M products.

The Hub Electric Corp. Issues Catalog of Products

THE Hub Electric Corporation, manufacturer of lighting and control equipment, has issued an 8-page catalog which presents, briefly and concisely, a representative selection of Hub products. Photographs and detail drawings amplify the text. Specifications and engineering details are also included.

Primary purpose of the pamphlet is to offer

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the architect, consulting engineer, lighting consultant, electrical contractor, and electrical jobber a convenient and condensed coverage of the field.

The equipment described includes stage lighting, exit and directional signs, indirect lighting, built-in lighting, fluorescent troffers, and stage switchboards for public, commercial, and industrial buildings. Hub Electric Company, 2227G W. Grand avenue, Chicago 12, Illinois.

Floating Power Plant Supplies Electricity to Belgium

ONE of America's floating power plants, which would look more at home on the Mississippi and was intended for waterways like that in the first place, has just been disclosed in the rôle of an ocean voyager that beat out a 51-day crossing of the Atlantic to generate part of Belgium's electric power after the Allies had liberated that country.

The queer looking craft, appropriately named the "Resistance," is capable of supplying the electric power needs of a city of 100,000, and is one of the floating power plants built to meet temporary power shortages expected in the United States in the early stages of the war production program.

How the "Resistance" was taken to Antwerp and hooked into the Belgium power system is told by her executive officer, Capt. George W. Franks, in "The Maintenance Engineer," a publication of the corps of engineers, U. S. Army.

The plant is housed in a steel hull half a city block long. Power is generated by a General Electric hydrogen-cooled generator driven by a steam turbine. Steam is supplied to the turbine by two oil-fired boilers that can consume 500,000 gallons of fuel oil in about seven days. The power lines were directly connected to the Belgian power lines in the Amsterdam hook-up by means of a 20-ft. transmission tower built on deck.

Communications throughout the plant are made by telephones connecting the office and the commanding officer's quarters with the main operating stations throughout the plant. In addition to the power-generating equipment on the barge, there is a machine shop equipped with lathes, grinders, pipefitting equipment, blacksmithing equipment, rigging, tinsmithing, and arc and acetylene welding equipment.

The plant operates four shifts and carries its own medic and has its own hospital. There are galley and mess accommodations. Quarters are provided for the regular crew with additional bunk space for the merchant marine crew that "sailed" her on the Atlantic trip.

Fire-fighting equipment consists of a battery of 76 cylinders of CO_2 piped throughout the plant. The fire-fighting chemical can be released from any of several control stations located at various places in the plant. In addition, above and below decks are high-pressure water hose connections supplied by the fire pumps.

Kidde & Company Moves Sales And Executive Offices

WALTER KIDDE & COMPANY, INC., has moved their sales and executive offices from 140 Cedar street, New York city, to their main plant at 1020 Main street, Belleville, New Jersey. To insure a high level of sales and efficiency of manufacturing the plant has become active in new product development. The company is branching beyond the fire extinguishing field into markets which employ either the type of manufacturing facilities Kidde now has, or the expanded selling organization the company is now building.

New Hancock Plant

MANNING, MAXWELL & MOORE, INC., has announced that their new plant for the manufacture of Hancock products, which is being built at the present time at Watertown (suburb of Boston), Massachusetts, will be ready for occupancy shortly after the first of the new year.

Greatly increased facilities with much more floor space and equipment will enable Hancock to build larger quantities of their line of valves, inspirators, injectors, and ejectors in shorter time, assuring quicker deliveries on all of these products.

Just as soon as the executive offices are com-

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pleted at the new plant, the sales department for these products will be moved from the Bridgeport, Connecticut, plant to Watertown, with M. S. Palmer as department manager.

Davey Offers Portable Truck-Mounted Machine Shop

PRODUCTION of a complete truck-mounted repair shop for use of contractors, utilities, oil companies, mines, railroads, street railway systems, highway departments, and all concerns operating over extended areas, was announced recently by the Davey Compressor Company, Kent, Ohio.

Suitable for mounting on any standard long wheel base truck, the shop assembly (known as the Davey mobile repair shop) contains virtually every item of equipment needed for mechanical repair and maintenance work. Its use, according to Paul H. Davey, designer and company president, will eliminate the present costly practice of hauling broken-down machines to central shops for repairs and will result in tremendous time and labor savings.

While it is possible to secure almost any desired combination of equipment, the Davey Company has worked out a number of standard assemblies for the use of specific operators. For example, one assembly includes as its main units, a 60 cu. ft. Davey Compressor, a 300 ampere Lincoln welding generator, 5 KW Westinghouse power generator, a 14 in. South Bend lathe (with complete lathe accessories and tools), and a drill press of 1 in. capacity. Auxiliary accessories are the same as those found in any stationary machine shop.

Key to the entire assembly is the Davey split propeller power take-off. This device inserted in the drive shaft of the truck, transmits all of the power of the truck engine to the driving of the air compressor, welding generator, and power generator. Its use eliminates the need for separate driving engines for each piece of equipment and permits placement on one truck of machines which, individually engine-driven, would require at least three trucks. Extremely simple in design and construction, this take-off can be installed in any garage or service shop.

Davey is now producing 100 of these assemblies on order for European shipment. Three units have already been shipped to Netherland East Indies.

The truck body is replete with tool boxes and storage bins. An outside power receptacle is provided for the use of local electric current when available. There are seven inside power receptacles and five interior ceiling lights.

The lower third of the sides of the truck body may be lowered to a horizontal position, where they provide a large amount of outside

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work bench space. The upper two-thirds of the body sides are raised to furnish protection against sun and rain for men working outside of the truck at these benches. The body is waterproof and can be locked securely to prevent tampering or theft.

While the mobile machine repair shop, model MMS-1, represents a recent development by the Davey Compressor Company, the concern made similar equipment over a period of years before the war, according to Mr. Davey. Assemblies, involving various combinations of air compressors, welding and lighting generators powered through the Davey heavy duty power take-off are now in use by utilities and highway departments throughout the country.

New Wire Rope Clamp

A NEW wire clamp called Cabl-Ox has been developed by the Nunn Manufacturing Company, 2125 Dewey avenue, Evanston, Illinois. This new product is the first step in reconversion to peacetime production by the Nunn organization.

The Cabl-Ox clamp, which was carefully engineered by the company research staff and then tested by leading industrial laboratories, incorporates a new and exclusive wedging action in its component parts. According to the manufacturer this feature makes it possible to hold loads in excess of the tensile strength of the rope used. The unit is alloy steel, cadmium plated for weather protection, streamlined for neat appearance and freedom from obstruction. The fact that Cabl-Ox is easily assembled by unskilled labor and may be readily disassembled for the tightening of stretched lines or other uses, results in important savings of time and money. It is made in all standard sizes from $\frac{1}{8}$-in. to $\frac{3}{4}$-in.

Trade announcements are being distributed and a broad advertising program will launch Cabl-Ox in all markets. Illustrated color folders describing the product are available upon request from the manufacturer.

New Method for Rejuvenating Leaking Gas Mains

A NEW method for rejuvenating worn out and leaking gas mains, without the necessity of making extensive excavations, was recently devised by a west coast gas company, working in coöperation with engineers of the Elliott Company, Jeannette, Pennsylvania.

The problem was to develop a simple economical means of relining 20-year-old gas mains which despite their age were still quite serviceable.

It had been decided that the answer was to use a $1\frac{1}{4}$-in. o.d. copper tubing, forcing it through the $2\frac{1}{2}$-in. i.d. main, by means of an air-driven power winch. The difficulty was that considerable scale and rust had accumulated inside the old mains which impeded the passage of the tubing. In addition, where welding burrs were present inside the old pipe, a further obstacle was introduced to the passage of the tubing which in itself was flexible enough to permit the installation of up to 1,000 feet at a time, working from excavations only 30 feet in length.

The solution to getting the tubing through the main was found in the use of an Elliott-Lagonda air-driven motor, fitted with a cutting head. This motor was attached to a $\frac{1}{4}$-in. nipple, brazed to the end of the copper tubing. The air to operate the motor was delivered through the length of the tubing from a compressor mounted on one of the gas company's trucks. In other words, the tubing itself served in place of the customary air hose and because of its relatively large diameter was able to supply air of the required pressure at its forward or motor end without difficulty.

These tube cleaners have been manufactured by Elliott for over 45 years. Designed in sizes from 25/32-in. up to 20 in. in diameter, they have been used primarily for cleaning tubes in boilers, condensers, and other heat exchange apparatus. According to Elliott Company, their latest application, as described above, has proved so successful that more than five miles of old gas mains have already been reconditioned by this method.

AGAEM Changes Name

CHANGE in the name of the Association of Gas Appliance and Equipment Manufacturers to Gas Appliance Manufacturers Association was announced by H. Leigh Whitelaw, managing director, recently. Functions of the association will in no way be altered. The change of name is for the purpose of simplification only.

Membership in the Association totals 296 manufacturers of gas appliances and equipment, who represent approximately 80 per cent of the total volume of such equipment manufactured in the United States and Canada.

Purpose of the association is to promote the use and sale of appliances and equipment used in the production, distribution, and utilization of gas as a fuel.

Stacey Brothers Expanding

STACEY BROTHERS GAS CONSTRUCTION COMPANY, Cincinnati, Ohio, one of the Dresser Industries, is completing a very large expansion program involving the entire organization and shop facilities in order to give a highly specialized technical service to the gas industry, with emphasis at the present time on the design and construction of propane and butane-air installations and liquefied natural gas storage plants, William E. Gruening, president of the company, announced recently.

The engineering services have been organized to cope with pressing problems of the gas industry such as existing and anticipated peak load demands and replacing equipment and processes which have carried a terrific burden during the war years but must now be modernized to enable the industry to expand further.

MORE PUBLIC UTILITIES

re switching to Job-Rated trucks

T WAS no "wartime secret" that owners of Dodge *Job-Rated* trucks experienced consistent "on-the-b" operation. Because their trucks *fit the job*, they erformed more efficiently, operated more economi-lly, lasted longer.

hat's why today so many more public utility com-anies are planning to standardize on precision-uilt Dodge *Job-Rated* trucks.

hey're buying trucks with engines rated for their eads. They're getting trucks with a transmission nd clutch, with axles, springs and every other unit *ob-Rated* to handle the job . . . to do a better job, nger, and at low cost!

ODGE DIVISION OF CHRYSLER CORPORATION

LISTEN TO THE MUSIC OF ANDRE KOSTELANETZ, WITH FAMOUS GUEST STARS
THURSDAYS, C. B. S., 9 P. M., E. T.

4

WARTIME YEARS PROVED PLENTY

Two "eye-opening" facts that will long be remembered by men to whom trucks were a "bread and butter" proposition during wartime, are these:

1 There's no substitute for years of truck-building experience, or for precise workmanship and quality . . . major reasons for the economy, dependability and long life of Dodge Job-Rated trucks.

2 Dodge Job-Rated trucks stayed on the job because of the ready availability of Dodge TRUCK PARTS and because of the prompt, efficient truck service of Dodge dealers.

See your Dodge dealer Now! Let him help you choose the right Dodge Job-Rated truck for all your hauling needs!

DODGE *Job-Rated* TRUCKS

FIT THE JOB ... LAST LONGER

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, financing, design, and construction.

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PROFESSIONAL DIRECTORY *(continued)*

PROFESSIONAL DIRECTORY (concluded)

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NO SERVICE INTERRUPTION

after bad transformer flare-up

Mulsifyre Projectors (in circles) on Mulsifyre System at Dayton Power and Light Company.

Immediate action averts disaster

"PRACTICALLY NO DAMAGE FROM FIRE", was the report of The Dayton Power & Light Co. on a serious flare-up that resulted from an electrical failure on one of their substation step-up transformers. 35 FOOT FLAMES were extinguished so quickly by the Mulsifyre System that adjacent transformers were unaffected. THIS IMMEDIATE, DEPENDABLE ACTION is the reason w leading utilities have chosen Grinnell Mulsif Systems for protecting over 10,000,000 KVA transformer capacity and many other instal tions of similar oil-filled equipment.

MULSIFYRE SYSTEMS operate on the principle of emulsifying blazing oil with a driving spray of water. The oil is turned into a liquid which is incapable of burning. Fire is extinguished in a few seconds and reignition is prevented.

Complete separation of water and oil takes place in a few hours . . . leaves oil undamaged.

There is absolutely no conductivity along the discharge of a Mulsifyre projector when spray strikes conductors carrying high voltages.

Mulsifyre Systems are permanently installed . . . they operate automatically or manually.

Recommended by Underwriters' Laboratories for use in extinguishing fires in flammable oils immiscible with water, wherever such oil is a fire hazard – in transformers and other oil-filled electrical equipment.

See that your equipment has this 24-hour-a-day protection, before fire strikes. Experienced Grinnell engineers will help you plan protection for your specific needs.

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AUTOMATIC FIRE PROTECTION